

1 UNITED STATES DISTRICT COURT  
2 EASTERN DISTRICT OF NEW YORK  
-----X  
3 CARLOS CHINCHA,  
4 Plaintiff,  
5 -against- Case No: 1:17-cv-06127  
6 MANOJKUMAR PATEL, in his individual and  
professional capacities,  
7 Defendant.  
8 -----X

9  
10 April 23, 2020  
11 11:01 a.m.

12  
13 VIDEOCONFERENCE DEPOSITION of  
14 CARLOS CHINCHA, taken pursuant to Notice,  
15 before Toni Freeman Greene, a Court Reporter  
16 and Notary Public of the State of New York.

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21  
22 ELLEN GRAUER COURT REPORTING CO. LLC  
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2

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25

1 A P P E A R A N C E S (Cont'd):

2

3 ALSO PRESENT:

4 CHRISTINA DIAZ, Spanish Interpreter

5 DEAN MCCONKEY, Spanish Interpreter

6 SHIRLEY SANCHEZ

7 MAGISTRATE JUDGE STEVEN L. TISCIONE

8 ANDY ZAMPELLA

9

10

11 \*\* ALL PARTIES APPEARING VIA VIDEOCONFERENCE \*\*

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1 ----- I N D E X -----

2	WITNESS	EXAMINATION BY	PAGE
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4		MR. LEON	228

7 ----- PORTIONS MARKED FOR COUNSEL -----

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13 ----- E X H I B I T S -----

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22 (EXHIBITS TO BE PRODUCED)

P R O C E E D I N G S

THE REPORTER: The attorneys participating in this deposition acknowledge that I am not physically present in the deposition room and that I will be reporting this deposition remotely.

They further acknowledge that, in lieu of an oath administered in person, I will administer the oath remotely, pursuant to Executive Order Number 202.7 issued by Governor Cuomo on March 19, 2020.

The parties and their counsel consent to this arrangement and waive any objections to this manner of reporting.

Please indicate your agreement by stating your name and your agreement on the record.

MR. MIZRAHI: Jason Mizrahi from the law offices of Levin-Epstein & Associates, P.C., attorney for the Defendant, Manojkumar Patel. We consent.

MR. LEON: Louis Leon, Plaintiff's counsel, consent to that as well.

1 S H I R L E Y S A N C H E Z ,  
2 Spanish Language Interpreter, was  
3 thereupon duly sworn on oath to translate  
4 faithfully the questions asked and the  
5 answers given to the best of her ability.

6 C A R L O S C H I N C H A ,  
7 the witness herein, having been first duly  
8 sworn by a Notary Public, was examined and  
9 testified as follows:

10 EXAMINATION

11 BY MR. MIZRAHI:

12 Q. Good morning, Mr. Chinchá.

13 A. Good morning.

14 Q. My name is Jason, I represent the  
15 Defendant in this action.

16 You're here this morning to sit for  
17 a deposition, and before we begin I just wanted  
18 to go over some ground rules, that way we can  
19 make sure that we finish early without running  
20 into any unnecessary issue. Okay?

21 A. Okay.

22 Q. If at any point you don't understand  
23 any of my questions, please let me know and  
24 I'll be happy to rephrase them.

25 A. Okay.

1 Q. If you don't ask me to rephrase  
2 them, I'm going to take that as you  
3 understanding the question.

4 A. Okay.

5 Q. If at any point you'd like to take a  
6 break, just let me know and I'd be happy to  
7 take a break. The only thing I'd ask is that,  
8 if there's a question that is directed to you,  
9 please answer the question before you ask to  
10 take a break.

11 A. Okay.

12 Q. Most importantly, please make sure  
13 you speak in a loud, clear voice and give  
14 verbal responses to my questions.

15 A. Okay.

16 Q. What that means, Carlos, is, please  
17 avoid from nodding your head up and down or  
18 side to side. All of your responses have to be  
19 verbal.

20 A. Okay.

21 Q. One last thing. I understand that  
22 your daughter is in the room with you; is that  
23 correct?

24 A. Yes.

25 MR. LEON: Jason, like I said

1 previously, I wanted to make a quick  
2 statement about this as soon as we --  
3 Jason. Jason.

4 Okay. Mr. Chinchu, I'm directing  
5 you, for the time being --

6 MR. MIZRAHI: You're not allowed to  
7 make any --

8 MR. LEON: Jason, we're going to  
9 speak one at a time and I started. You  
10 have this nasty habit of speaking over  
11 me. Let me finish.

12 Madam Translator, please -- Jason.  
13 Jason. I'm directing my client to hold  
14 off from answering questions until I've  
15 put my statement on the record --

16 Jason. Jason. I told you before we  
17 started that I wanted to put a statement  
18 on the record and you are deliberately  
19 trying to prevent me from doing that.  
20 So, you can continue delaying this --

21 Jason. Jason. Jason. You can  
22 continue talking over me, but until this  
23 is done, until I put my statement on the  
24 record, you are not going to continue  
25 getting answers from my client until I'm



1 done making my quick statement.

2 MR. MIZRAHI: I will be calling the  
3 Court --

4 MR. LEON: I'm going to make my  
5 statement.

6 Number one -- Jason. Number one --  
7 Jason. Jason. Jason. Jason. I'm going  
8 to finish my statement for the record.

9 Number one, this is to confirm that  
10 this deposition is not being video  
11 recorded in any shape or form.

12 When we were about to start this  
13 deposition you attempted to start  
14 recording this deposition without giving  
15 us prior notice.

16 When we brought to your attention  
17 that you had not served a depo notice  
18 explaining that this deposition remotely  
19 being taken would be recorded, you  
20 decided to not continue with a video  
21 recording.

22 So, to that extent, if anything's  
23 being recorded, this will not be  
24 admissible in any shape or form.

25 Lastly, I told you before we started

1 the deposition, I told you I would  
2 properly put a statement on the record  
3 disclosing it to you -- because it's not  
4 a secret, I told you before we started --  
5 that my client's daughter's in the room.  
6 She will only be assisting for technical  
7 reasons related to Zoom, document  
8 sharing, zooming in, being able to access  
9 the Zoom application.

10 That is the role -- that is her  
11 limited role in this deposition and it's  
12 our position that she's going to need to  
13 be there the entire deposition to make  
14 sure that nothing gets dropped,  
15 disconnected, X'd out, because my client  
16 doesn't know how to do it.

17 So, I'm putting that on the record;  
18 proceed to asking your questions, Jason.

19 MR. MIZRAHI: Toni, are we on the  
20 record?

21 THE REPORTER: Yes, we are.

22 MR. MIZRAHI: I'm going to be  
23 placing a phone call to the chambers of  
24 Magistrate Judge Steven L. Tiscione.  
25 We'd like to have this phone call placed

1 on the record.

2 THE REPORTER: Thank you.

3 MR. LEON: Madam Translator, could  
4 you just advise my client that a call  
5 will be made to chambers and that he is  
6 not being asked any questions and he is  
7 not, right now, to interact with anyone  
8 in this deposition while attorneys call  
9 the Judge.

10 THE INTERPRETER: Okay.

11 MR. LEON: I actually ask that you  
12 turn off your video and your microphone  
13 to allow counsel to comfortably make a  
14 phone call to the Court's chambers.

15 (The following call to Magistrate  
16 Judge Steven Tiscione's chambers took  
17 place:)

18 UNIDENTIFIED SPEAKER: Good morning,  
19 Magistrate Judge Tiscione's chambers.

20 MR. MIZRAHI: Good morning. My name  
21 is Jason Mizrahi. I represent a  
22 Defendant in a pending matter before  
23 Magistrate Judge Tiscione.

24 I'm calling in regards to a  
25 deposition that's currently proceeding.

1 We've run into an issue with respect to  
2 attorney for Plaintiff coaching his  
3 client. I'd like to just brief --

4 UNIDENTIFIED SPEAKER: Okay. I'm  
5 going to need your --

6 MR. MIZRAHI: -- the  
7 issue --

8 UNIDENTIFIED SPEAKER: Okay. Stop  
9 talking, stop talking.

10 I'm going to need your phone number  
11 where you can be reached and I can have  
12 the Judge get back to you.

13 MR. MIZRAHI: Okay. My phone number  
14 is XXX-XXX-XXXX.

15 UNIDENTIFIED SPEAKER: Do you have a  
16 court reporter present?

17 MR. MIZRAHI: Yes.

18 UNIDENTIFIED SPEAKER: Is there  
19 speakerphone capability?

20 MR. MIZRAHI: Yes.

21 UNIDENTIFIED SPEAKER: And what is  
22 the docket number on the case?

23 MR. MIZRAHI: The docket number is  
24 17-cv-06127.

25 UNIDENTIFIED SPEAKER: Okay. I'll

1 have the Judge get back to you shortly.

2 Thank you.

3 MR. MIZRAHI: Thank you.

4 (The call was concluded.)

5 MR. LEON: So we're going to wait or  
6 do you want to proceed?

7 MR. MIZRAHI: We'll proceed.

8 MR. LEON: Okay. (Speaking  
9 Spanish.) I'm asking him to put on the  
10 video and the sound.

11 BY MR. LEON:

12 Q. We want to make sure that the  
13 deposition testimony that you're giving today  
14 is accurate.

15 A. Okay.

16 Q. To make sure that it's accurate, we  
17 need to make sure that all of your responses  
18 are being given from you directly. What that  
19 means is, you're not allowed to be coached from  
20 your attorney or from anybody else who's in the  
21 room with you about what to say.

22 MR. LEON: Objection to the form of  
23 the question or to the statement.

24 Q. Do you understand, Carlos?

25 A. Yes.

1 MR. LEON: I would also ask, Madam  
2 Translator, can you also translate my  
3 objections for my client, as well, so he  
4 can hear them?

5 THE INTERPRETER: I'm going to beg  
6 you that, please, give me the instruction  
7 if he can answer or not, because --

8 MR. LEON: Definitely.

9 THE INTERPRETER: Absolutely. No  
10 problem.

11 MR. LEON: Thank you.

12 MR. MIZRAHI: He's going to answer  
13 no matter what, just so you know.

14 MR. LEON: Objection to that  
15 willfully inaccurate statement. My  
16 client will respond subject to any  
17 objections.

18 Thank you, Jason. Proceed with your  
19 deposition.

20 Q. Carlos, is there anybody else in the  
21 room with you right now?

22 A. No.

23 Q. Was there anyone in the room with  
24 you a moment ago?

25 MR. LEON: Objection. Just -- the

1 translation --

2 THE INTERPRETER: I'm sorry. Could  
3 you repeat that, Mr. Jason? And can you  
4 focus your camera? I can see only your  
5 chest.

6 Q. Carlos, is there anybody else in the  
7 room with you right now?

8 MR. LEON: Objection, asked and  
9 answered. You may respond.

10 I'm sorry. Can you please translate  
11 all of my objection, not just the last  
12 part?

13 MR. MIZRAHI: You don't have to  
14 translate his objections, Christina.

15 MR. LEON: Well -- I'm sorry. I'm  
16 sorry. Okay. So, now you're creating  
17 problems.

18 Yes, if I make the request she will  
19 have to do that, respectfully to her,  
20 because my client has an interpreter  
21 here. It's not fair that he doesn't get  
22 to hear my objection if I direct him not  
23 to answer.

24 MR. MIZRAHI: But, all of your  
25 objections should be directed to the

1 court reporter. None of your objections  
2 should be directed to your client. Your  
3 client should have no need --

4 MR. LEON: Jason, if I want to  
5 direct my client not to respond to a  
6 question, I have that right, just like  
7 you did during your client's deposition.

8 So, I'm absolutely asking the  
9 translator to translate my objections.  
10 If you want to continue wasting time,  
11 this is on you.

12 MR. MIZRAHI: (Inaudible) not to  
13 respond. It's past that. You're not  
14 allowed to coach your client.

15 MR. LEON: Okay. Madam Translator,  
16 I'm going to respectfully ask -- and  
17 you've done this before. I'm sure you  
18 know what the answer is.

19 I'm respectfully asking that you  
20 translate my objection and, you know,  
21 what I say with that objection, which is  
22 short and simple. It's "Objection,"  
23 this, "You may respond." That's it. Or  
24 "You can't respond." Simple as that.

25 I'm not asking you to translate



1 every last word I'm saying right now to  
2 Mr. Mizrahi, because Mr. Mizrahi causes  
3 me to say so many things to him because  
4 he's frequently wrong, so I want to make  
5 sure that my client understands the  
6 objection.

7 Jason, proceed with your deposition,  
8 because you're delaying it.

9 Q. Carlos, is your daughter in the room  
10 with you right now?

11 MR. LEON: Objection, asked and  
12 answered. You may answer again,  
13 Mr. Chinchu.

14 THE WITNESS: No.

15 Q. Is there anybody else in the room  
16 with you right now?

17 MR. LEON: Objection, asked and  
18 answered. You may respond again.

19 Q. Carlos, a moment ago your  
20 attorney --

21 MR. LEON: Are you withdrawing the  
22 question, Jason?

23 Q. Carlos, a moment ago your --

24 MR. LEON: Jason. Jason. Are you  
25 withdrawing the question?

1 Q. Carlos, a moment ago your attorney  
2 stated that your daughter would be available to  
3 help with technology. Is that the case?

4 MR. LEON: Objection, compound  
5 question. You may respond.

6 THE WITNESS: She's near.

7 Q. Can you please bring her in, please?

8 MR. LEON: Objection. Objection.  
9 No. You're not -- your deposition  
10 doesn't allow you to bring someone in or  
11 have him do stuff. Ask him a question  
12 and he'll answer your question.

13 Q. Is your daughter there, Mr. Chinchu?

14 MR. LEON: Okay. Objection, asked  
15 and answered. This is the last time I'm  
16 having my client answer this question.

17 Please translate the question, Madam  
18 Translator.

19 THE WITNESS: No.

20 Q. Is she in the other room?

21 A. Yes.

22 Q. Can you please ask her to come in?

23 MR. LEON: Objection. Objection.  
24 You can ask him questions, but you're not  
25 going to ask him to go do physical feats

1 like going to bring someone in. You're  
2 going to ask him questions --

3 This can be cleared up on the record  
4 between counsel if you need it. This is  
5 not an appropriate way to proceed here,  
6 Jason.

7 So, no. He's not going to go get  
8 her, you have to ask him questions and  
9 he'll answer truthfully, to the best of  
10 his ability, subject to any objections.

11 MR. MIZRAHI: Toni, Madam Court  
12 Reporter, could you please star Plaintiff  
13 counsel's response to my last question?

14 MR. LEON: And you can star it and I  
15 can supplement it by simply saying, my  
16 position is, Jason, you can ask him  
17 questions -- no, Jason. You can put your  
18 hand up all you want; I'm going to  
19 finish.

20 You can ask him the questions that  
21 you want to ask him, but you're not going  
22 to be ordering him to go do the duties  
23 that you want him to do, go bring someone  
24 from the other room, bring them out.

25 If you want to clarify the

1 daughter's role, I've already done that.  
2 You're wasting time asking questions  
3 about that. Make your statement on the  
4 record if you need to make it and ask him  
5 questions.

6 MR. LEON: Madam Court Reporter, can  
7 you please confirm that the response has  
8 been starred?

9 THE REPORTER: Yes. I marked it.  
10 Yes.

11 Q. Carlos, can you please ask your  
12 daughter to come into the room?

13 MR. LEON: Okay. Objection. Jason,  
14 you literally just heard what I said.

15 If there's something that you want,  
16 ask me and I can have it done. Don't ask  
17 him to go bring someone from a different  
18 room. He's not here to obey orders to go  
19 do something in a different room.

20 If you want me to have his daughter  
21 come in, I can try and contact her, have  
22 her come in, but she's not answering  
23 questions under oath; she's not under  
24 oath, she's simply --

25 You said you didn't want her in the

1 room, my client's answered that she's not  
2 in the room. What more do you want?

3 Put your statement on the record and  
4 I can ensure that it will be followed to  
5 the extent that it's a reasonable  
6 request.

7 Q. Carlos, if I ask you a question,  
8 please answer the question.

9 MR. LEON: Wait for a question,  
10 Carlos. Wait for a question.

11 Q. Carlos, can you please ask your  
12 daughter to come into this room?

13 MR. LEON: Objection. I am  
14 directing you -- you can respond to his  
15 question, but you do not need to go do  
16 anything.

17 Let the record reflect that there's  
18 some sounds being made where it sounds  
19 like someone is entering the room.

20 MS. SANCHEZ: What do you need?

21 MR. MIZRAHI: Hello?

22 MS. SANCHEZ: Yes?

23 MR. MIZRAHI: Hi. My name is Jason.

24 MR. LEON: I'm sorry. I'm going to  
25 object to this. She's not under oath.

1 So, make your statement for the record,  
2 Jason, and we will comply to the best of  
3 our ability.

4 She's not under oath here, she's not  
5 being questioned here, she's free to walk  
6 up and leave if she wants to.

7 So, I'm asking you, if you want to  
8 make a statement like you don't want her  
9 to coach him, which she's never going to,  
10 make your statement on the record. I  
11 believe you already have. That's it.  
12 Please, let's stop wasting time asking  
13 questions --

14 MR. MIZRAHI: I'm going to ask you  
15 to please stop speaking out of line.  
16 You're only limited to giving objections  
17 as to form and privilege. I'm going to  
18 ask you again to stop coaching your  
19 client and whoever --

20 MR. LEON: I'm sorry, I'm sorry.  
21 Are you saying that his daughter's my  
22 client? Is that what you're saying?

23 MR. MIZRAHI: No. That's not what  
24 I'm saying.

25 MR. LEON: I'm confused by your

1 argument and its legal basis. Please  
2 explain it to me so I --

3 MR. MIZRAHI: I understand that  
4 you're available today to assist with  
5 some technology; is that correct?

6 MS. SANCHEZ: Yes.

7 MR. MIZRAHI: Okay. So, I'd like  
8 your assistance to pull up some exhibits  
9 that we will be introducing into  
10 evidence.

11 MS. SANCHEZ: Okay.

12 MR. MIZRAHI: I'm sharing these  
13 exhibits through the Zoom chat. I'm  
14 sharing them right now, so if you could  
15 just please confirm that you have them  
16 pulled up, that would be helpful.

17 MR. LEON: As you do that, Shirley,  
18 I just want to say, in the future, Jason,  
19 you could have just said that you needed  
20 her for an exhibit and that would have  
21 been all that we needed to do.

22 So, please, in the future just ask  
23 and it will be --

24 MR. MIZRAHI: This is the last time  
25 I'm going to tell you --

1 MR. LEON: Jason, you can threaten  
2 all you want. I'm simply saying, in the  
3 future please just ask me to bring her in  
4 so that she can take care of the  
5 exhibits. That's all you had to say.

6 Now proceed with your questions.

7 MR. MIZRAHI: Can you please confirm  
8 the documents that I have sent you, if  
9 you can just confirm exactly what you  
10 have in front of you.

11 MS. SANCHEZ: Okay. It says  
12 Exhibit A, Exhibit B and Exhibit C and D.

13 MR. MIZRAHI: Can you please pull  
14 each of those documents up individually  
15 so you can see them?

16 MS. SANCHEZ: Okay.

17 MR. LEON: Shirley, as you're doing  
18 that, I'd just like to object that, just  
19 because those documents are opened up  
20 does not necessarily mean that she will  
21 not be needed throughout the deposition.  
22 I'd like to note that for the record that  
23 we may still need her.

24 Proceed with your questions or  
25 statements, I guess.



1 MS. SANCHEZ: Yeah. They're open.

2 MR. MIZRAHI: Your client didn't  
3 make one single indication that he would  
4 have any issues pulling any documents up.  
5 You're improperly coaching your client.

6 MR. LEON: And that's why I made the  
7 statement at the beginning of this  
8 deposition, Jason. That's why he didn't  
9 need to do it, because you didn't ask him  
10 the questions, and I made the statement  
11 on the record before you asked him the  
12 questions.

13 Please, Shirley, if you could please  
14 open up those documents, as Counsel's  
15 requested.

16 MS. SANCHEZ: Yeah. I pulled them  
17 up already.

18 MR. MIZRAHI: Louis, I'm going to  
19 ask you again, stop directing your client  
20 and stop directing whoever else is in the  
21 room. You're --

22 MR. LEON: Wait, Jason. Wait,  
23 Jason. I'm not talking to the Witness,  
24 Jason. I'm talking to the same person  
25 you're talking to about exhibits.

1 MR. MIZRAHI: -- stop coaching -

2 MR. LEON: Jason, I'm not talking to  
3 my witness. Jason, I'm not coaching my  
4 witness, I'm talking to the person who's  
5 opening up the exhibits, the same person  
6 you're taking to.

7 Shirley, please make sure those  
8 documents are opened up, as Defense  
9 counsel has requested.

10 MS. SANCHEZ: They are open.

11 MS. MIZRAHI: Shirley, while you're  
12 here, I'd just like to let you know that  
13 your presence here is only going to be  
14 limited to assisting with technology on  
15 an as-needed basis.

16 MS. SANCHEZ: Yes. I understand  
17 that.

18 MR. MIZRAHI: You're prohibited from  
19 being present at the deposition for any  
20 other purpose, especially to guide your  
21 father in answering questions.

22 MS. SANCHEZ: I understand that.

23 Q. Carlos, are you currently taking any  
24 prescription medications?

25 A. Yes.

1 Q. What medications are you currently  
2 taking?

3 A. For diabetes, for blood pressure and  
4 cholesterol.

5 Q. Will any of these medications affect  
6 your ability to testify truthfully today?

7 A. No.

8 Q. Is there any reason why you wouldn't  
9 be able to testify truthfully here today?

10 A. No.

11 Q. Mr. Chinchu, how did you prepare for  
12 this deposition?

13 A. I prepared with my attorney for  
14 45 minutes.

15 Q. Did you and your attorney review any  
16 paperwork?

17 MR. LEON: Objection to the form.  
18 You may respond to that question.

19 THE WITNESS: Yes, with my  
20 attorneys.

21 Q. Carlos, did you and your attorney  
22 review any paperwork to prepare for the  
23 deposition?

24 MR. LEON: Objection, asked and  
25 answered. You may respond.

1 THE WITNESS: Yes.

2 Q. What paperwork did you and your  
3 attorney review?

4 A. Exhibit A, B, C, D.

5 MR. LEON: I'm just instructing  
6 Mr. Chinchu to respond in Spanish so that  
7 the translator can translate correctly.

8 MR. MIZRAHI: Don't direct your  
9 client --

10 MR. LEON: Jason. Jason. Right now  
11 I'm indifferent to what your position is  
12 on this.

13 Please, Madam Translator, can you  
14 tell my client to respond in Spanish so  
15 that you, the translator, have an easier  
16 time explaining the testimony.

17 THE INTERPRETER: (Complies.)

18 THE WITNESS: Okay. The Complaint  
19 and Exhibits A, B, C and D.

20 Q. Carlos, besides the Complaint and  
21 besides Exhibits A, B, C and D, which were  
22 uploaded to you directly a moment ago, did you  
23 review any other paperwork to prepare for this  
24 deposition?

25 MR. LEON: Objection to the form of

1 the question. You may respond.

2 I'm sorry. Madam Translator, can  
3 you please translate my objection and my  
4 instruction to my client.

5 THE WITNESS: No.

6 Q. Carlos, can you please spell your  
7 full name for the record?

8 A. Carlos Chinchá.

9 THE INTERPRETER: Court reporter --  
10 Toni, do you want the spelling or --

11 MR. LEON: I -- I'm sorry. I would  
12 rather allow the attorney to ask that  
13 question.

14 THE INTERPRETER: Okay.

15 Q. Carlos, can you please spell your  
16 full name?

17 A. C-A-R-L-O-S, Carlos; C-H-I-N-C-H-A,  
18 Chinchá.

19 Q. Carlos, when is your birthday?

20 A. June 20, 1953.

21 Q. Carlos, where were you born?

22 A. Peru.

23 Q. Which city?

24 A. Lima.

25 Q. Carlos, what is your current

1 address?

2 MR. LEON: Objection. Do not  
3 respond to that, but please translate the  
4 question. If you want the reason, I'll  
5 give it to; if not, please proceed with  
6 your question.

7 MR. MIZRAHI: What's the basis for  
8 your instructing your client not to  
9 respond to that question?

10 MR. LEON: Now that you ask, I'll  
11 gladly explain. It's irrelevant, it's  
12 meant to harass him and it's private,  
13 confidential information that has no  
14 bearing in this case.

15 And we're concerned for reasons that  
16 we would gladly bring up in a phone call  
17 with Judge Tiscione about concerns  
18 relating to immigration status and what  
19 could happen to my client if he gives the  
20 exact address of where he lives.

21 There's no relevance of where he  
22 currently lives to this lawsuit. That is  
23 the basis, among other things, for  
24 directing him not to respond to that  
25 question.

1           If you have something I should  
2           consider, I will gladly consider it and  
3           respond.

4           MR. MIZRAHI: We'll note your  
5           objection and we'll raise it on the phone  
6           call with Judge Tiscione.

7           MR. LEON: Sure.

8           Q. Carlos, how long have you lived at  
9           your current address?

10          A. Around seven months.

11          Q. Where were you living previously?

12          MR. LEON: Objection. You may  
13          respond.

14          THE WITNESS: In Queens.

15          Q. What was the address of your last  
16          residence?

17          MR. LEON: Objection to the form of  
18          the question. You may respond.

19          THE WITNESS: In Patel's building.

20          Q. Mr. Chinchu, when did you immigrate  
21          to America?

22          A. I don't remember, but I would say  
23          about 27, 28 years ago.

24          Q. Can you tell me about how you came  
25          to America?

1 MR. LEON: Ooh. Objection. Do not  
2 respond. You may translate the question.

3 I'll gladly explain to you why.  
4 Immigration status, that's the concern.

5 Q. Carlos, how did you immigrate to  
6 America?

7 MR. LEON: Objection to form, but  
8 also directing the client not to respond  
9 to that question. Same reason.

10 MR. MIZRAHI: For the record, can  
11 you please articulate your basis for  
12 instructing your client not to respond to  
13 that question?

14 MR. LEON: So, in case you paused  
15 sound a minute ago, I will say it again:

16 You're asking him how he immigrated  
17 to the United States, which has several  
18 implications of how immigrants get into  
19 this country. That has to do with  
20 immigration status, which you, an  
21 employment attorney, should know, is not  
22 permissible in this circuit.

23 So, I'm directing my client not to  
24 respond to that question, because it goes  
25 to his immigration status.



1 Q. Carlos, how old were you when you  
2 immigrated to America?

3 A. Forty years old.

4 Q. Carlos, why did you immigrate to  
5 America?

6 A. Because I wanted to get better.

7 Q. What do you mean by that?

8 A. The conditions in Peru were very  
9 bad.

10 Q. Carlos, when you immigrated here did  
11 you come by yourself or with anybody else?

12 MR. LEON: Objection. Respond to  
13 that question, but without giving any  
14 details regarding immigration status --  
15 about immigration status.

16 THE WITNESS: Alone.

17 Q. Mr. Chinchá, have you ever been  
18 married?

19 A. Always.

20 Q. How many times have you been  
21 married?

22 MR. LEON: Objection, relevance.  
23 You may respond.

24 THE WITNESS: Only once.

25 Q. Do you recall, when did you get

1 married?

2 MR. LEON: Objection, relevance.

3 You can answer. You may respond.

4 THE WITNESS: Honestly, I don't  
5 remember the date, but I would say  
6 around -- more than 40 years.

7 Q. Do you have any children?

8 MR. LEON: Objection. You may  
9 respond.

10 THE WITNESS: Yes.

11 Q. How many children do you have?

12 MR. LEON: Objection, relevance.

13 THE WITNESS: I have five boys and  
14 one daughter.

15 MR. LEON: I'm not sure that's what  
16 he said. I'd like to object that that's  
17 not what he said in Spanish.

18 THE INTERPRETER: I'm sorry.  
19 Interpreter was wrong and attorney was  
20 right. So, two boys and one girl.

21 MR. MIZRAHI: I'm going to ask you  
22 again to stop coaching your client.

23 MR. LEON: Jason, I wasn't coaching,  
24 I actually spoke to the translator.

25 Madam Translator, is that correct

1 that I only spoke to you --

2 THE INTERPRETER: He was correcting  
3 me.

4 MR. LEON: Thank you.

5 MR. MIZRAHI: And I'm going to ask  
6 you again to stop speaking out of line.

7 MR. LEON: Jason, I don't know what  
8 "speaking out of line" means, because  
9 we're not, like -- I don't know what that  
10 means. We're not friends or anything, so  
11 I don't know what "out of line" means.  
12 But, just let's continue asking  
13 questions, please.

14 MR. MIZRAHI: Well, what that means,  
15 Louis, is that any speaking objection  
16 that you have is limited to objection as  
17 to privilege and objection as to a form  
18 of a question.

19 MR. LEON: Where did you learn that?

20 MR. MIZRAHI: You are not allowed to  
21 articulate anything --

22 MR. LEON: Did you learn that at the  
23 last deposition, Jason? Because, it  
24 sounds like the Judge had to tell you  
25 some of these things at the last

1 deposition.

2 And actually, the Judge said that we  
3 could object -- no, no, Jason. You  
4 continue interrupting me, we're going to  
5 continue doing this.

6 The Judge said that we can object,  
7 give our quick statement and then direct  
8 the client to respond or not respond and  
9 that's it. And that's what I've been  
10 doing. I'm in compliance with the  
11 Judge's rules.

12 But, I'm sorry. As you know, I'll  
13 say this for the record, I am a native  
14 Spanish speaker, I'm a son of Hispanic  
15 immigrants.

16 The translator, as anyone, human  
17 error, got a part of the translation  
18 wrong, she just confirmed that she got it  
19 wrong, so I put it on the record.

20 You may proceed, Jason.

21 MR. MIZRAHI: Louis, please be  
22 quiet.

23 MR. LEON: No. Jason, please don't  
24 tell me to please be quiet or shut me  
25 down that way, just continue with your

1 deposition. We're equals, I'm not your  
2 subordinate. Go on. Shame on you.

3 Q. Carlos, have you ever gotten  
4 divorced?

5 MR. LEON: Objection, relevance.

6 And this is the last question on this  
7 sort of thing I'm going to allow you to  
8 be asking, because I don't see the  
9 relevance and it sounds like annoying and  
10 harassing. But, my client can respond to  
11 that question.

12 MR. MIZRAHI: Christina?

13 THE INTERPRETER: Yes, sir.

14 MR. MIZRAHI: Please stop  
15 translating his objections until we get  
16 the Judge on the phone call --

17 MR. LEON: Jason, that's not how  
18 this works. You might be paying for the  
19 transcript, you might be paying for the  
20 translator, but you do not get to dictate  
21 what they take down and what they don't  
22 take down if I'm speaking and I'm  
23 saying --

24 MR. MIZRAHI: (Unintelligible.)

25 MR. LEON: I absolutely have the

1 right -- Jason. No, no, no. Jason.  
2 Jason. Did you bring this up during the  
3 deposition of your client, who  
4 understands English very well, or kind  
5 of, was able to hear your objections and  
6 your directions to him. My client has  
7 that same right.

8 Don't instruct the translator to not  
9 do her function. Shame on you. Go on.

10 Q. Carlos, have you ever gotten  
11 divorced?

12 MR. LEON: Same objection.  
13 Irrelevant, harassing. But, you may  
14 respond.

15 THE WITNESS: No.

16 Q. Carlos, have you ever been arrested?

17 MR. LEON: Objection as to  
18 relevance. I'm going to need a second to  
19 ascertain whether there's a privilege  
20 that needs to be interposed. Give me a  
21 second, Jason, while I think.

22 Q. Carlos, the question is whether or  
23 not --

24 MR. LEON: No, no, no. Jason.  
25 Jason. No. No. No. I'm considering

1 right now if there's a privilege I should  
2 be making. Give me -- it's literally  
3 been three seconds. Hold on. Stop  
4 proceeding forward with the questions.

5 I'm going to let you ask this one  
6 question about potential criminal  
7 history, but it's irrelevant and, in  
8 conjunction with all your other  
9 questions, it's harassing.

10 So, I'm going to direct my client to  
11 respond to your question, but that's...

12 THE WITNESS: No.

13 Q. Have you ever been convicted of a  
14 crime?

15 MR. LEON: Okay. This is, in fact,  
16 the last question I will let you ask him  
17 about his criminal history. I gave you  
18 some leeway, he can respond to this, but,  
19 after that, no more questions about  
20 criminal history, because it's not  
21 relevant and it's harassing.

22 THE WITNESS: No.

23 Q. Carlos, besides this lawsuit have  
24 you ever been involved in any other legal  
25 claims or lawsuits?

1 MR. LEON: Objection to the form of  
2 the question --

3 MR. MIZRAHI: I'm getting a phone  
4 call from the Court, okay?

5 MR. LEON: Okay. Great.

6 Can you please ask your daughter to  
7 turn off the video and the mic, please?

8 (The following call with Magistrate  
9 Judge Steven Tiscione took place:)

10 MR. MIZRAHI: Your Honor, you're  
11 currently in the deposition with the  
12 court reporter. Is that okay?

13 THE COURT: That's fine.

14 MR. MIZRAHI: You're on speakerphone  
15 right now and you're joined by opposing  
16 counsel as well as the court reporter.

17 We're calling you this morning,  
18 Your Honor, in connection with the  
19 deposition in the matter of Chinchu v.  
20 Patel.

21 We're currently taking Plaintiff's  
22 deposition and we're running into two  
23 issues with respect to Plaintiff's  
24 counsel.

25 The first issue is, Plaintiff's



1 counsel is impermissibly coaching his  
2 client on what to say.

3 Multiple times during the deposition  
4 he has directed his client to testify in  
5 a specific language before the client has  
6 had an opportunity to respond.

7 He has directed his client not to  
8 answer questions related to basic  
9 biographical information on the basis of  
10 relevance.

11 He has impermissibly spoken and  
12 coached his client related to answers to  
13 questions before his client has had an  
14 opportunity to respond.

15 And secondly, he has directed his  
16 client's daughter to be present in the  
17 room and is directing his client's  
18 daughter to participate in the  
19 deposition.

20 I'd like to make it clear that any  
21 basis for her being in the room hasn't  
22 been established. His client had not  
23 requested any assistance from his  
24 daughter, his client didn't request any  
25 assistance from somebody to be present.

1           So, we simply request that,  
2   Your Honor, number one, direct  
3   Plaintiff's counsel to refrain from  
4   improper speaking objections. Any  
5   speaking objections that he has must be  
6   limited to privilege or to form.

7           We'd respectfully ask Your Honor to  
8   direct Plaintiff's counsel to refrain  
9   from coaching his client and we would  
10   respectfully ask Your Honor to refrain  
11   from directing client's daughter to  
12   participate in this deposition.

13           MR. LEON: Your Honor, can I quickly  
14   respond?

15           THE COURT: Yes.

16           MR. LEON: I apologize to Your Honor  
17   that we're yet again in another phone  
18   call with Your Honor regarding what  
19   should otherwise be a simple deposition.

20           Let me start with the simplest  
21   thing. The daughter's role, contrary to  
22   what Defense counsel said, I'm not  
23   instructing her to participate in the  
24   lawsuit in any way that would be  
25   improper.

1 I stated during our last conference,  
2 Your Honor, that my client is not  
3 technologically savvy. His answer to the  
4 question, "Do you have an Apple product,"  
5 is, "Is that a type of fruit?" He  
6 doesn't know how to handle this.

7 And so, I told Mr. Mizrahi before we  
8 went on the record, at length, that his  
9 daughter would be readily available  
10 there, would be in the room to the extent  
11 that an exhibit needed to be opened or  
12 there was some issue, because  
13 Mr. Mizrahi's uploading exhibits onto the  
14 Zoom function. If my client accidentally  
15 X's out, then those documents are not  
16 available to him.

17 And there's many glitches that I,  
18 someone who knows how to use technology,  
19 have experienced and messed up and have  
20 had hours' worth of delays in mediations  
21 and depositions.

22 I'm simply trying to ensure that  
23 this individual, his daughter, who, for  
24 the record, is no longer in the room, has  
25 since then been instructed to go into a

1 different room, has remained in a  
2 different room and only came back when  
3 Mr. Mizrahi ordered her to come back, as  
4 if she were a witness in this case.

5 So, we're not using her improperly.  
6 I've stated on the record that his  
7 daughter is not participating, is not  
8 coaching. She has acknowledged that,  
9 she's helped out already with exhibits.

10 My client, simply put, needs this.  
11 This is not a luxury, this is a real  
12 need. And she knows and she's  
13 acknowledged that she's not  
14 participating. She's not coaching him in  
15 any shape or form.

16 So, as to that, I told Defense  
17 counsel and he tried to not let me put  
18 those statement on the record. And when  
19 I put it on the record he said that I'm  
20 making impermissible statements.

21 The other thing, the other part of  
22 what Defense counsel lumped together with  
23 no examples at all is that I'm somehow  
24 making speaking objections and speaking  
25 free for all.

1 I should just give Your Honor  
2 context that Defense counsel noticed the  
3 deposition for a remote deposition, no  
4 recording whatsoever.

5 At the start of this deposition, in  
6 bad faith, without giving me notice,  
7 without telling me he was going to do it,  
8 he began recording the deposition.

9 When I pointed out to Mr. Mizrahi  
10 that his last deposition notice did not  
11 show a video recording, that I had not  
12 been able to properly prepare my client  
13 for such a deposition or object to one,  
14 he soon thereafter decided to not do  
15 video recording. It's ever since been  
16 X'd out.

17 So, at the beginning of the  
18 deposition I said I'd like to put this on  
19 the record, I'd like to make sure that  
20 we're on the same page, that nothing's  
21 being recorded and that, to the extent  
22 that anything gets inadvertently  
23 recorded, you're not going to use that or  
24 rely upon it in any shape or form for  
25 trial.

1 Mr. Mizrahi was unhappy that I would  
2 make any of those statements. He did not  
3 want me to be able to do that.

4 As to specific questions,  
5 Mr. Mizrahi has gone so far to tell the  
6 translator -- my client's a Spanish  
7 speaker who is using a translator. I  
8 speak Spanish as well, but I am not  
9 engaging in speaking with my client in  
10 Spanish, I'm doing it through the  
11 translator.

12 Mr. Mizrahi has unilaterally told  
13 the translator wrongfully that she is not  
14 to translate my objections or directions  
15 for him to not answer.

16 Mr. Mizrahi seemingly wants my  
17 client to be ambushed. And if I'm  
18 telling him not to answer a question, he  
19 should be able to understand my  
20 instruction and should not answer.

21 Mr. Mizrahi has done that, even  
22 though his client, who understands  
23 English quite well, reads and writes it,  
24 at least on an average level, had the  
25 privilege of having his counsel defend

1 him and he could hear his objections.  
2 But, he wants to keep that from my  
3 client.

4 And as to the specific points of  
5 questions I directed my client not to  
6 answer, they've only been on questions  
7 that there -- it is harassing, it is  
8 annoying, there's no possible relevance  
9 and there are some serious concerns.

10 For example, Your Honor is familiar  
11 with the fact that in the Second Circuit  
12 it is outright improper to ask a client  
13 about his immigration status, how he got  
14 into the country, and Mr. Mizrahi has  
15 gone so far to ask him, at least two or  
16 three time repeatedly, after I told him,  
17 "Don't answer that question" to my  
18 client, "How did you arrive at this  
19 country?"

20 "How did you get in" was pretty much  
21 the question or the implication of it,  
22 and I've advised him that I'm directing  
23 my client not to respond to that question  
24 because it relates to his immigration  
25 status.

1 And there's so many related  
2 questions like that. Mr. Mizrahi has  
3 been unable to cite a single example in  
4 which I supposedly have been making  
5 speaking objections.

6 I took what Your Honor told us  
7 during the last phone call to heart at  
8 the last deposition. I object, I state  
9 the basis of the objection quickly in a  
10 couple of words and then I tell my client  
11 "Respond to the question" so there's no  
12 confusion or I say "Don't respond to the  
13 question" and I provide the basis to  
14 Counsel.

15 There's nothing improper about what  
16 we're doing, there's no evidence that  
17 we're doing anything improper and I'm  
18 simply trying to leave a clear record for  
19 this deposition. That's it, Your Honor.

20 MR. MIZRAHI: Your Honor, if I may  
21 quickly respond, I promise my response  
22 will be quick.

23 THE COURT: Go ahead.

24 MR. MIZRAHI: I'd just like to point  
25 out that Mr. Leon is making improper



1 objections on relevance and then he's  
2 proceeding to --

3 THE COURT: That's not a relevance  
4 objection. If you're asking questions on  
5 his immigration status, that's  
6 prohibited.

7 MR. MIZRAHI: I'm not asking him  
8 questions about his immigration status,  
9 Your Honor.

10 THE COURT: Asking him how he got  
11 into the country is an improper question.  
12 You know that. He shouldn't be answering  
13 it.

14 MR. MIZRAHI: Your Honor, I asked  
15 him what his current address was and I  
16 asked him how he immigrated to America.

17 And the purpose of the question is  
18 directly relevant as to the manner in  
19 which that this employee had voluntarily  
20 wished to have gotten paid. It directly  
21 bears on the manner in which he got paid  
22 during the course of his employment.

23 We're not using this testimony for  
24 any improper purpose. We're not using  
25 this testimony with regards to his

1 immigration status. We're simply using  
2 it because it's directly relevant to the  
3 crucial issue here of how he got paid and  
4 the manner in which he voluntarily wished  
5 to have gotten paid.

6 MR. LEON: Your Honor, I'm sorry to  
7 just reply, but, respectfully, that  
8 doesn't really doesn't make sense. I'm  
9 now sure how he got into the country --

10 THE COURT: I don't understand. Is  
11 he claiming he wanted to get paid in a  
12 different way?

13 MR. LEON: No. Your Honor, there's  
14 no dispute in this case about what my  
15 client was paid or how he was paid. I  
16 questioned Defendant for seven hours a  
17 week or a week and a half ago and we seem  
18 to all be on the same page, at least  
19 about how he was being paid and how much  
20 he was being paid.

21 So, to act now like that has any  
22 relevance on this, it's completely wrong  
23 and deliberately misleading. There's no  
24 reason to know this other than to  
25 ascertain his immigration status.

1 And if I could add where this  
2 concern comes from, also, reading  
3 Mr. Patel, the Defendant's, deposition,  
4 he stated that the reason why --

5 I mean, among other things, like  
6 admitting to defrauding the government  
7 and other admissions he made under oath,  
8 he stated that my client did not give him  
9 a Social Security number because, quote,  
10 unquote, he doesn't have one, and  
11 implying that he's illegally here.

12 So, clearly there's a belief that  
13 he's illegal, which we're not going to  
14 affirm or deny, because it's prejudicial  
15 to our client, but clearly that's where  
16 these questions were coming from.

17 "Why did you come to the United  
18 States?" "How did you come to the United  
19 States?" "Where do you currently live?"  
20 Even though my client just told him that  
21 he has not -- he's never lived in the  
22 location where he currently lives at any  
23 point in time while he worked for  
24 Defendant and there's no dispute that my  
25 client lived at the building the entire

1 time that he worked there.

2 So, there's no reason to ascertain  
3 these things other than -- and if I'm  
4 being honest, my concern is that this  
5 information is going to be used for some  
6 improper purpose -- I'm not saying by  
7 Counsel.

8 But, Defendant made more than clear  
9 his hostility towards my client and  
10 implying that he's illegal, then his  
11 counsel asking him questions that have to  
12 do only about his immigration status.  
13 That's just improper.

14 And so, we're directing the client  
15 not to respond to those questions.

16 THE COURT: All right. Look. As to  
17 the initial matter, his daughter can  
18 provide technical assistance as long as  
19 she's not participating in the actual  
20 deposition itself.

21 So, if he needs her in the room to  
22 help with the technology, I mean, that's  
23 perfectly fine.

24 MR. MIZRAHI: You Honor, we'd ask  
25 that she be in front of the camera so we

1 can see any facial expressions or  
2 manners that she's going --

3 MR. LEON: Your Honor, this is --

4 MR. MIZRAHI: We'd like to make sure  
5 she's not coaching her father in any way,  
6 shape or form.

7 MR. LEON: Your Honor, this is  
8 completely unnecessary. Mr. Mizrahi's  
9 not mentioned a single instance in which  
10 the daughter has even remotely tried to  
11 coach the client.

12 And I made that clear on the record.  
13 She acknowledged, "I'm not coaching him,  
14 I'm not doing this." And now that they  
15 have to both share the spotlight and bump  
16 into each other, then he's going to say,  
17 "Oh, she touched him and that's why he  
18 answered the way he answered" --

19 MR. MIZRAHI: (Unintelligible.)

20 THE COURT: I can't hear when  
21 everybody's talking at once.

22 You know, this is your deposition.  
23 If you want to proceed with somebody who  
24 doesn't know what he's doing and can't  
25 actually open up documents and, you know,

1 respond to your questions, you're more  
2 than welcome to do that, but don't be  
3 surprised if you have a (unintelligible)  
4 deposition.

5 She's not a party. I'm not ordering  
6 her to do anything. If she wants to  
7 provide technical assistance to help you  
8 out, that's fine. But I'm not ordering  
9 her to appear on camera.

10 If you don't want to use her  
11 assistance, then don't use her  
12 assistance. And you'll end up with a  
13 useless deposition.

14 MR. MIZRAHI: We would just ask  
15 Your Honor to respectfully direct  
16 opposing counsel to refrain from coaching  
17 his client any further.

18 MR. LEON: We're not coaching,  
19 Your Honor. There's no proof that  
20 there's been coaching.

21 THE COURT: Nothing I've heard to  
22 this point suggests to me that he's  
23 coaching his client. He is telling his  
24 client not to respond to improper  
25 questions. So, it's not coaching.

1 That's called being a lawyer.

2 MR. MIZRAHI: Number one, he's  
3 directing his objections to his client,  
4 not to the court reporter. If there are  
5 any objections that need to be spoken  
6 into the record, they should be spoken  
7 for the court reporter, not for purposes  
8 of coaching his client.

9 He's directing his client to testify  
10 in Spanish. If his client understands my  
11 questions and if he chooses to answer  
12 voluntary in English --

13 THE COURT: No. No. That's not  
14 happening. He either does it in Spanish  
15 or he does it in English. We're not  
16 doing something where it's half in  
17 English and half in Spanish. Those come  
18 out horrible.

19 You pick a language and you stick  
20 with it. You either use the interpreter  
21 or you don't. You don't do half and  
22 half.

23 MR. LEON: Your Honor, could I just  
24 add just one thing about the objections.

25 All I've asked is that the

1 translator translate my objections and my  
2 direction to my client to either respond  
3 or not respond. Because, he might not  
4 understand a single thing I'm saying  
5 about the question that he needs to hear:  
6 "Objection, don't respond" or "Respond."

7 THE COURT: The translator should be  
8 interpreting everything. There's no  
9 reason why the translator shouldn't be  
10 interpreting everything.

11 If there's something you need to say  
12 outside the presence of the witness, you  
13 ask them to leave the room. You don't  
14 tell the interpreter not to interpret.

15 MR. MIZRAHI: Thank you for your  
16 assistance, Your Honor. We're ready to  
17 move forward.

18 THE COURT: All right. Good luck.  
19 (The call was concluded.)

20 MR. MIZRAHI: Just for the record,  
21 it's 12:04. I'm going to take a quick  
22 bathroom break.

23 MR. LEON: Sure.

24 (Recess taken.)

25 (Off-the-record discussion held.)



1 MR. LEON: Just for the record,  
2 we'll take a break at 1:15. That's it.

3 BY MR. MIZRAHI:

4 Q. Carlos, besides this case have you  
5 ever been involved in any other lawsuits?

6 MR. LEON: Objection to the form of  
7 the question. You may respond.

8 THE WITNESS: No.

9 Q. Carlos, do you have any documents  
10 related to your employment with Mr. Patel?

11 MR. LEON: Objection to the form of  
12 the question. You may respond.

13 THE WITNESS: No.

14 Q. Carlos, before filing this lawsuit  
15 did you give your attorney any documents?

16 THE INTERPRETER: I'm sorry. I  
17 didn't hear that very well.

18 Q. Did you give your attorney any  
19 documents in connection with filing this  
20 lawsuit?

21 MR. LEON: Objection to the form of  
22 the question. You may respond without  
23 revealing any privileged communications  
24 between counsel and client.

25 THE WITNESS: No.

1 Q. Carlos, did you ever search for any  
2 documents pertaining to your relationship with  
3 Mr. Patel?

4 MR. LEON: Objection to the form of  
5 the question. You may respond.

6 THE WITNESS: No.

7 Q. Carlos, did anybody ever ask you to  
8 look for any documents pertaining to your  
9 relationship with Mr. Patel?

10 MR. LEON: Objection. Objection.  
11 My client can answer, but without  
12 breaking attorney-client privilege.

13 THE WITNESS: No.

14 Q. Carlos, do you maintain any records  
15 concerning your relationship with Mr. Patel?

16 MR. LEON: Objection to the form of  
17 the question. You may respond to that  
18 question, Mr. Chinchu.

19 THE WITNESS: No.

20 Q. Carlos, did you keep a log of the  
21 hours that you worked at the building?

22 MR. LEON: Objection to the form of  
23 the question. You may respond to that  
24 question.

25 THE WITNESS: No.

1 Q. Carlos, do you have any utility  
2 receipts from when you lived at the building?

3 MR. LEON: Objection to the form of  
4 the question. You may respond.

5 THE WITNESS: No.

6 Q. How about any electrical receipts?

7 MR. LEON: Objection -- no. I'm  
8 sorry, I'm sorry. That's not what he  
9 asked. Counsel just asked about  
10 electronic receipts, is the question he  
11 asked.

12 Could the court reporter just read  
13 back the question?

14 (Record read.)

15 MR. LEON: Electrical, not  
16 electronic? Okay. I take that back. I  
17 misheard.

18 Objection to the form of the  
19 question. You may respond.

20 THE WITNESS: No.

21 Q. Did you ever receive any invoices  
22 from Mr. Patel?

23 MR. LEON: Objection to the form of  
24 the question. You may respond.

25 THE WITNESS: No.

1 Q. Carlos, how did you find your  
2 attorney?

3 MR. LEON: Objection to the form of  
4 that question. You may respond to that  
5 question, Mr. Chinchu.

6 THE WITNESS: I found it in the  
7 local newspaper.

8 Q. What local newspaper?

9 A. Like ads.

10 Q. Do you recall the name of the  
11 newspaper?

12 A. No.

13 Q. Was the advertisement in English or  
14 in Spanish?

15 MR. LEON: Objection to the form of  
16 the question. You may respond.

17 THE WITNESS: Spanish.

18 Q. What did the advertisement say?

19 MR. LEON: Objection to the form of  
20 the question. You may respond.

21 THE WITNESS: Repeat the question,  
22 please.

23 Q. What did the advertisement say?

24 MR. LEON: Objection to the form of  
25 the question. You may respond.

1 THE WITNESS: Attorneys  
2 (unintelligible).

3 Q. Carlos, what is your attorney's  
4 name?

5 MR. LEON: Objection to the form of  
6 the question. You may respond.

7 THE WITNESS: Louis Pena (phonetic).

8 Q. Carlos, how many times did you meet  
9 with your attorney before filing the lawsuit?

10 MR. LEON: Objection. Assumes  
11 testimony in evidence, not on the record.  
12 You may respond.

13 THE WITNESS: Forty-five to fifty  
14 minutes.

15 Q. Forty-five to fifty minutes in one  
16 session or more than one session?

17 MR. LEON: Objection to the form of  
18 the question. You may respond to that  
19 question.

20 THE WITNESS: One session.

21 Q. What made you decide to go with your  
22 attorney?

23 MR. LEON: Objection. You may  
24 respond to that question, but without  
25 revealing any communications between my

1 office and you, Mr. Chinchu. Otherwise,  
2 please respond to Mr. Mizrahi.

3 MR. MIZRAHI: Louis, he didn't  
4 reveal any information.

5 MR. LEON: Yes, Jason. Thank you  
6 for stating the obvious. That's why I'm  
7 telling him not to. But, thank you for  
8 your contribution.

9 You may respond to the question,  
10 Mr. Chinchu.

11 THE WITNESS: Because he was abusive  
12 and arrogant.

13 Q. Why did you hire your attorney?

14 MR. LEON: Objection. Asked and  
15 answered. Please respond without  
16 revealing any communications between my  
17 office and you, Mr. Chinchu. Otherwise,  
18 please respond to Mr. Mizrahi's question.

19 THE WITNESS: Because he was  
20 arrogant and abusive.

21 Q. Who did you first meet with when you  
22 met with your attorneys?

23 MR. LEON: Objection to the form of  
24 that question. You may respond.

25 THE WITNESS: With my attorney,

1 Louis Pena.

2 Q. Did you meet with anybody else?

3 MR. LEON: Objection to the form of  
4 the question. You may respond.

5 THE WITNESS: No.

6 Q. How many times have you and Louis  
7 met?

8 MR. LEON: Objection to the form of  
9 the question. You may respond to that  
10 question.

11 THE WITNESS: Two or three times.

12 Q. Do you know when the Complaint in  
13 this action was filed?

14 MR. LEON: Objection to the form of  
15 the question. You may respond to that  
16 question.

17 THE WITNESS: The second time.

18 Q. Carlos, I asked if you recall the  
19 date when the Complaint in this action was  
20 filed.

21 MR. LEON: Objection. Please wait  
22 for Counsel to ask a question, then  
23 answer.

24 Jason, I think he's waiting for you  
25 to ask the question.

1 Q. Do you recall the date when this  
2 Complaint was filed?

3 MR. LEON: Objection to the form of  
4 the question. You may respond.

5 THE WITNESS: October 2017.

6 Q. Mr. Chinchá, are you currently  
7 employed?

8 MR. LEON: Objection, relevance.  
9 You may respond.

10 THE WITNESS: No.

11 Q. Carlos, were you employed in 2017?

12 MR. LEON: Objection to the form of  
13 the question. You may respond.

14 THE WITNESS: Until September of  
15 that year I was with Patel.

16 Q. What about afterwards?

17 MR. LEON: Objection, relevance.  
18 You may respond.

19 THE WITNESS: No.

20 Q. Were you employed in 2018?

21 MR. LEON: Objection to the form of  
22 that question. You may respond to that  
23 question.

24 THE WITNESS: No.

25 Q. What about in 2019?



1 MR. LEON: Objection to the form of  
2 that question. You may respond to that  
3 question.

4 THE WITNESS: No.

5 Q. What about 2020?

6 MR. LEON: Objection to the form of  
7 the question. You may respond to that  
8 question.

9 THE WITNESS: No.

10 Q. Have you ever received any  
11 government benefits?

12 MR. LEON: Objection. I'm directing  
13 my client not to respond to that line of  
14 questions. If Mr. Mizrahi would like an  
15 explanation, I'll gladly provide it. Do  
16 not respond.

17 MR. MIZRAHI: Louis, please execute  
18 your basis for refusing to allow your  
19 client to respond.

20 MR. LEON: The reason is that, in  
21 the Circuit, requests for any government  
22 benefits that a client may have received,  
23 applied, tried to apply for is an  
24 inappropriate line of questions, as a  
25 general matter, as you hopefully know,

1 but certainly I do, as someone who works  
2 in New York City, that most if not all  
3 government benefits are not possible to  
4 be given to people who have a certain  
5 documented or undocumented status.

6 We believe it goes to immigration  
7 and we believe that it has absolutely  
8 nothing to do with this case and it is  
9 only being done to harass and annoy my  
10 client in this action.

11 Furthermore, and I guess I'd say  
12 finally, this is not a discrimination  
13 case or disability case, this is a wage  
14 and hour case, thus this is just  
15 completely improper. That's my basis.

16 MR. MIZRAHI: Do you have a citation  
17 for the Second Circuit authority that  
18 you're referencing?

19 MR. LEON: No, Jason, not right now  
20 in front of me. But, if we want to take  
21 some time off and do some research, then  
22 maybe you can provide me with your legal  
23 basis for asking this question and we can  
24 discuss it. It will just eat away at  
25 your seven hours, so you let me know what

1           you want to do.

2           Q.   Carlos, have you ever applied for  
3 government benefits in 2017?

4           MR. LEON:  Objection.  Do not  
5 respond.  I think I left my objection  
6 superbly clear.  And especially if it's  
7 concerning a time period during which my  
8 client wasn't working for your client,  
9 the point is further made.

10           Same objection as last time.  
11 Continue, Counselor.

12           Q.   Mr. Chinchu, have you ever filed  
13 taxes in 2017?

14           MR. LEON:  Objection.  Do not  
15 answer.  I'm going to make my objection.  
16 Do not answer.

17           I will gladly further edify you  
18 about why I'm directing my client not to  
19 respond, but I presume you already know.

20           Would you like me to elaborate,  
21 Counsel?  I'll make the decision for you.

22           The basis for that is, as you know  
23 and Judge Tiscione just told you an hour,  
24 hour and a half ago, that there are  
25 certain questions you know are

1 inappropriate; you're an employment  
2 litigator, you should know that you can't  
3 ask a plaintiff if he's filed taxes.

4 And then, with follow-up questions  
5 that would be, well, "Did you have a  
6 Social Security?" "Did you have a 1099?"  
7 "What's your legal status?"  
8 Inappropriate line of questions, all of  
9 those.

10 Directing my client not to respond.  
11 And you already know you're not allowed  
12 to ask that. Please don't continue  
13 engaging in questions that you know in  
14 good faith you can't ask. Don't answer.

15 Q. Carlos, how have you received income  
16 in 2017?

17 MR. LEON: Objection to the form of  
18 that question. You may respond to that  
19 question.

20 THE WITNESS: I didn't receive  
21 anything.

22 Q. What about 2018?

23 MR. LEON: Objection. Objection.  
24 I'm directing my client not to respond to  
25 that. What income he's made in 2018 has

1 no relevance to this case and it's only  
2 meant to annoy and harass my client.

3 Directing you not to respond,  
4 Mr. Chinchu.

5 MR. MIZRAHI: For the record,  
6 opposing counsel has directed his client  
7 not to respond on the basis of relevance,  
8 which is a basis you've offered before,  
9 right?

10 MR. LEON: Oh. And -- no, no. And  
11 annoying and harassing, remember. Don't  
12 forget that. I know you forget things  
13 sometimes. Don't forget.

14 Q. What about in 2019?

15 MR. LEON: Same objection. Do not  
16 respond. Same objection and I'll gladly  
17 continue explaining if you require  
18 further explanation. I want to work with  
19 you in good faith.

20 Q. Carlos, do you have any licenses?

21 MR. LEON: Ooh. Objection. Unless  
22 you clarify what you mean by that, I'm  
23 not going to let my client respond.  
24 Please clarify what you mean.

25 Because, there's a certain type of

1 license I'll let you ask him questions  
2 about and there's a different type of  
3 license I'm not going to let you ask him  
4 questions about.

5 So, please clarify what you mean,  
6 otherwise the direction to my client is  
7 that he not respond.

8 Do you mean driver's license, by any  
9 chance? Is that what you're asking him?

10 Q. Carlos, do you have any licenses?

11 MR. LEON: Carlos, I'm directing you  
12 not to respond until Mr. Mizrahi  
13 clarifies what he means. Otherwise, it  
14 seems to be part and parcel of his other  
15 inappropriate line of questions. Do not  
16 respond.

17 Q. Carlos, do you have any electrical  
18 licenses?

19 MR. LEON: Objection to the form of  
20 the question. You may respond.

21 THE WITNESS: I have only basic  
22 knowledge.

23 Q. So, do you have any professional  
24 licenses?

25 MR. LEON: Objection to the form of

1 the question. And I'm directing my  
2 client not to provide any information  
3 concerning licenses, driving licenses or  
4 residential licenses, but you can  
5 otherwise answer Counsel's question.

6 THE WITNESS: No.

7 Q. Carlos, how old are you?

8 A. Sixty-seven years old.

9 Q. Carlos, do you use a cane to walk?

10 MR. LEON: Objection to the form of  
11 that question. Mr. Chinchu, you may  
12 respond to that question.

13 THE WITNESS: Not all the time.

14 Q. How often do you use a cane to walk?

15 MR. LEON: Objection to the form of  
16 the question. You may respond to that  
17 question.

18 THE WITNESS: When I go out to walk.

19 Q. Besides using a cane when you go out  
20 to walk, do you ever use a cane for any other  
21 reason?

22 MR. LEON: Objection to the form of  
23 the question. You may respond.

24 THE WITNESS: No.

25 Q. Are you currently receiving

1 Social Security benefits?

2 MR. LEON: Jeez, it's like you don't  
3 listen. Objection. Do not answer.

4 Mr. Mizrahi, I direct you to my  
5 prior objections about government  
6 benefits. You're on notice. I repeat it  
7 to you. Improper line of questions,  
8 irrelevant and -- I'm going to stress  
9 this -- it's meant to annoy and harass my  
10 client.

11 Do not answer the question, please.

12 Q. Carlos, do you suffer from any  
13 health issues?

14 MR. LEON: Objection to the form of  
15 the question. You may respond.

16 THE WITNESS: Diabetes.

17 Q. Besides suffering from diabetes, do  
18 you suffer from any other health issues?

19 MR. LEON: Objection to the form of  
20 that question. You may respond.

21 THE WITNESS: No.

22 Q. Do you suffer from any physical  
23 disabilities?

24 MR. LEON: Objection to the form of  
25 the question. You may respond.



1 THE WITNESS: Right now I get tired.

2 Q. What do you mean?

3 MR. LEON: Objection to the form of  
4 the question. You may respond.

5 THE WITNESS: Depression.

6 Q. How long have you suffered from  
7 depression?

8 MR. LEON: You may respond.

9 THE WITNESS: I would say that  
10 around six months ago.

11 Q. Do you currently suffer from any  
12 other physical disabilities besides getting  
13 tired?

14 A. No.

15 Q. Do you have any issues with your  
16 back?

17 MR. LEON: Objection to the form of  
18 the question. You may respond.

19 THE WITNESS: No.

20 Q. What about with your knees?

21 MR. LEON: Objection to the form of  
22 that question. You may respond to that  
23 question.

24 THE WITNESS: No.

25 Q. What about with your heart?

1 MR. LEON: Objection to the form of  
2 that question. You may respond to that  
3 question.

4 THE WITNESS: No.

5 Q. Do you suffer from any eye problems?

6 MR. LEON: Objection to the form of  
7 that question. You may respond to that  
8 question.

9 THE WITNESS: Yes.

10 Q. What eye problems?

11 A. I have to use drops.

12 Q. For what?

13 A. Because, from the diabetes I suffer  
14 from glaucoma.

15 MR. LEON: Objection to the form of  
16 the question. He responded already,  
17 obviously.

18 Q. Please describe your glaucoma.

19 MR. LEON: Objection to the form of  
20 the question. You may respond to that  
21 question.

22 THE WITNESS: I went to see the  
23 doctor and they injected me, glaucoma.

24 Q. What symptoms do you suffer?

25 MR. LEON: You may respond.

1 THE WITNESS: I had to apply the  
2 drops because my vision got low.

3 Q. When you say your vision got low,  
4 what do you mean?

5 A. That I see a little blurry.

6 Q. When you say you see a little  
7 blurry, can you elaborate?

8 MR. LEON: You may respond.

9 THE WITNESS: The pressure on my eye  
10 got high.

11 MR. LEON: I'm sorry. I just want  
12 to make a clarification for the record.  
13 I would just ask the translator to  
14 translate the verb tense in which the  
15 question and the answer is given.

16 There's been a couple of instances  
17 in which the question is asked in the  
18 present or my client responds in the  
19 present and the translator is translating  
20 in a different tense and vice versa.

21 So, I would just ask the translator  
22 to translate consistent with the verb  
23 tense that the question and the answer is  
24 given in.

25 If you could repeat the question and

1 have the answer responded, because part  
2 of if was cut out while his mic was off.  
3 So, I think it might make more sense to  
4 just start the question and answer over.

5 (Record read.)

6 THE WITNESS: Yes. Can you repeat  
7 the question?

8 MR. LEON: Madam Court Reporter,  
9 could you please repeat the question?

10 (Record read.)

11 MR. LEON: Objection to the form of  
12 the question. You may respond.

13 THE WITNESS: Every eight hours I  
14 have to apply the drops.

15 Q. Because you have blurry vision,  
16 right?

17 MR. LEON: Objection to the form of  
18 the question. Mischaracterizing. You  
19 may respond.

20 THE WITNESS: I had to apply them  
21 every eight hours because my vision gets  
22 blurry.

23 Q. How long have you been suffering  
24 from these eye problems?

25 MR. LEON: Objection to the form of

1 the question, mischaracterizing prior  
2 testimony. You may respond to that  
3 question that you were just asked.

4 THE WITNESS: Now, like a year ago.

5 Q. Carlos, why do you use a cane?

6 MR. LEON: Objection, asked and  
7 answered. You may respond to that  
8 question again.

9 THE WITNESS: For my balance.

10 Q. Do you have issues with your  
11 balance?

12 MR. LEON: You may respond.

13 THE WITNESS: Yes. A little.

14 Q. What issues do you have?

15 MR. LEON: Objection to the form of  
16 the question. You may respond.

17 THE WITNESS: I don't have much  
18 balance.

19 Q. And how long have you been like  
20 that?

21 MR. LEON: Objection to the form of  
22 that question. You may respond,  
23 Mr. Chinchu.

24 THE WITNESS: One year.

25 Q. Have you ever undergone any

1 surgeries?

2 MR. LEON: Objection to the form of  
3 the question. You may respond.

4 THE WITNESS: Yes.

5 Q. What surgeries?

6 MR. LEON: Same objection to this  
7 line of questions. Objection to the  
8 form. You may respond. And I'm sorry.  
9 Also objection, relevance. You may  
10 respond.

11 THE WITNESS: On my eye, glaucoma.

12 Q. When?

13 MR. LEON: Objection to the form of  
14 that question. You may respond to that  
15 question.

16 THE WITNESS: April 2015.

17 Q. So, you received the surgery in  
18 April of 2015?

19 MR. LEON: Objection to the form of  
20 that question. You may respond.

21 THE WITNESS: Yes. April 2015.

22 Q. Before April of 2015 were you  
23 receiving any treatment for your glaucoma?

24 MR. LEON: Objection to the form of  
25 the question. You may respond to that

1 question.

2 THE WITNESS: No.

3 Q. Where did you receive this  
4 treatment?

5 MR. LEON: Objection to the form of  
6 the question. You may respond to that  
7 question.

8 THE WITNESS: At the hospital.

9 Q. Why did you receive this treatment?

10 MR. LEON: Objection to the form of  
11 the question. You may respond.

12 THE WITNESS: I went to receive an  
13 examination or check for my vision.

14 Q. How long had you been suffering from  
15 vision problems before you received the  
16 treatment?

17 MR. LEON: Objection to the form of  
18 the question and to the extent that it's  
19 mischaracterizing prior testimony. You  
20 may respond.

21 THE WITNESS: They checked my vision  
22 and they told me that I need the surgery.

23 Q. Carlos, how long have you been  
24 suffering from eye problems before undergoing  
25 that surgery?

1 MR. LEON: Objection to the form of  
2 that question and to the extent that it  
3 mischaracterizes prior testimony. You  
4 may respond to that question,  
5 Mr. Chinchá.

6 THE WITNESS: I didn't have any  
7 vision problems.

8 Q. Then why did you get surgery on your  
9 eyes?

10 MR. LEON: Objection, asked and  
11 answered. You may respond to that  
12 question again.

13 THE WITNESS: Because my sugar got  
14 high and my vision got erased.

15 Q. When did you start suffering from  
16 vision loss?

17 MR. LEON: Objection to the form of  
18 that question and to the extent that it  
19 mischaracterizes prior testimony. You  
20 may respond.

21 THE WITNESS: It was one Monday.

22 Q. Do you remember the month and the  
23 year?

24 MR. LEON: Objection to the form of  
25 the question. Ambiguous, unclear. You



1 may respond, Mr. Chinchu.

2 THE WITNESS: April of '15.

3 Q. Did you have any health issues  
4 before April of 2015?

5 MR. LEON: Objection to the form of  
6 that question. You may respond to that  
7 question.

8 THE WITNESS: Only diabetes.

9 Q. Who treated you for your glaucoma?

10 MR. LEON: Objection to the form of  
11 that question. You may respond to that  
12 question.

13 THE WITNESS: The eye doctor.

14 Q. What was his name?

15 MR. LEON: Objection to the form of  
16 the question. You may respond to that  
17 question.

18 THE WITNESS: Honestly, I don't  
19 remember.

20 Q. Where was he located?

21 MR. LEON: Objection to the form of  
22 the question. You may respond to that  
23 question.

24 THE WITNESS: Jamaica Hospital.

25 Q. What was the name of the hospital?

1 MR. LEON: Objection, asked and  
2 answered. Objection to the form. You  
3 may respond.

4 THE WITNESS: Queens Hospital Center  
5 in Jamaica.

6 Q. Carlos, were you treated at Jamaica  
7 Hospital Medical Center?

8 MR. LEON: Objection to the form of  
9 the question. You may respond.

10 THE WITNESS: Yes. They told me  
11 that -- that I went.

12 Q. Carlos, how long have you been using  
13 a cane?

14 MR. LEON: Objection, asked and  
15 answered multiple times. Last time he's  
16 answering this question. You may  
17 respond.

18 THE WITNESS: Recently, about one  
19 year ago, I told you.

20 Q. Besides suffering from vision loss,  
21 did you suffer from any other health issues in  
22 2015?

23 MR. LEON: Objection to the form of  
24 that question and to the extent that it's  
25 ambiguous. You may respond.

1 THE WITNESS: Yes. I had another  
2 surgery.

3 Q. What surgery?

4 MR. LEON: You may respond.

5 THE WITNESS: They gave me a  
6 pacemaker.

7 Q. When did you receive that surgery?

8 MR. LEON: Objection to the form of  
9 the question. You may respond.

10 THE WITNESS: May 2015.

11 Q. Were you also treated at Jamaica  
12 Hospital Medical Center?

13 MR. LEON: Objection to the form of  
14 that question. You may respond to that  
15 question that Counsel just asked.

16 THE WITNESS: Yes.

17 Q. And why did you receive that  
18 surgery?

19 MR. LEON: Objection to the form of  
20 the question. You may respond.

21 THE WITNESS: Because I was not able  
22 to walk.

23 Q. Prior to getting the surgery, how  
24 long were you unable to walk for?

25 MR. LEON: Objection to the form of

1           that question. Ambiguous. You may  
2           respond if you understand it.

3           THE WITNESS: One day.

4           Q. Can you describe to me what  
5           happened?

6           MR. LEON: Objection to the form of  
7           that ambiguous question. You may respond  
8           to that ambiguous question.

9           THE WITNESS: I fainted and I got  
10          his care. When I wanted to get up I  
11          couldn't lift my legs.

12          Q. Besides the eye surgery and besides  
13          the pacemaker surgery, did you receive any  
14          other medical treatment in 2015?

15          MR. LEON: Objection to the form of  
16          the question. You may respond to that  
17          question.

18          THE WITNESS: No.

19          MR. LEON: Before you go on, it's  
20          now 1:16. When we resumed we had agreed  
21          to take a lunch break at 1:15, so I just  
22          wanted to bring that up again.

23          MR. MIZRAHI: Would you like to take  
24          that break now?

25          MR. LEON: Yeah, since it's 1:16.

1 (Luncheon recess from 1:16 p.m. to  
2 1:54 p.m.)

3 (Replacement interpreter joins  
4 deposition.)

5 D E A N M C C O N K E Y ,

6 Spanish Language Interpreter, was  
7 thereupon duly sworn on oath to translate  
8 faithfully the questions asked and the  
9 answers given to the best of his ability.

10 MR. LEON: I'd like to state just  
11 one thing on the record.

12 For the translator, I would just  
13 respectfully ask that any objections that  
14 I make -- I'll keep them as short as  
15 possible -- as well as any directions to  
16 answer or not answer the question, that  
17 they be translated.

18 We consulted the Judge and the Judge  
19 is onboard with that instruction.

20 And I just want to, so that I don't  
21 talk directly to my client, if you can  
22 just advise my client that you're the  
23 translator that will be taking over from  
24 the other translator from here on.

25 THE INTERPRETER: (Complies).

1 BY MR. MIZRAHI:

2 Q. Hi Carlos.

3 A. Hi.

4 Q. Carlos, besides receiving the  
5 treatment for your eye in April 2015 and the  
6 pacemaker treatment in May 2015, did you  
7 receive any other medical treatment in 2015?

8 MR. LEON: Objection, asked and  
9 answered. You may answer one last time.  
10 You may respond.

11 THE WITNESS: No.

12 Q. Besides the health issues that you  
13 previously described, did you previously suffer  
14 from any other health issues in 2015?

15 MR. LEON: Objection to the form of  
16 that question. And it's also been asked  
17 and answered, just like the previous  
18 question, and I'm instructing my client  
19 to respond to it one last time.

20 THE WITNESS: No.

21 Q. Besides the eye vision problem that  
22 you described and the problem with your  
23 pacemaker, did you suffer from any health  
24 issues in 2016?

25 MR. LEON: Objection to the form of

1 the question. You may respond to that  
2 question.

3 THE WITNESS: No.

4 Q. Besides suffering from the vision  
5 problems that you were describing and the  
6 balance issues that you were describing, did  
7 you suffer from any other health issues in  
8 2017?

9 MR. LEON: Objection to the form of  
10 that question and to the extent that it  
11 mischaracterizes prior testimony. You  
12 may respond.

13 THE WITNESS: No.

14 Q. Besides the vision issues that you  
15 previously described and the balance issues  
16 that you previously described, did you suffer  
17 from any other health issues in 2018?

18 MR. LEON: Objection to the form of  
19 that question and to the extent that it  
20 incorrectly recites what you have said  
21 previously. You may answer that  
22 question.

23 THE WITNESS: No.

24 Q. Besides the vision issues that you  
25 previously described and the balance issues

1 that you previously described, did you have any  
2 other health issues in 2018?

3 MR. LEON: Objection to the form of  
4 that question, objection to the extent  
5 that it mischaracterizes prior testimony  
6 and, finally, asked and answered. You  
7 may respond.

8 THE WITNESS: No.

9 Q. Carlos, you testified that you  
10 received a surgery in May 2015 for a pacemaker;  
11 is that correct?

12 MR. LEON: Objection, asked and  
13 answered. You can answer one more time.

14 THE WITNESS: Yes.

15 Q. After you received the surgery in  
16 May 2015, were you able to stand for longer  
17 periods of times?

18 MR. LEON: Objection to the form of  
19 that question. It's ambiguous. You may  
20 respond if you understand it.

21 THE WITNESS: Yes.

22 Q. Carlos, after you received the eye  
23 surgery in April 2015 were you able to stand  
24 for long periods of time?

25 MR. LEON: Objection to the form of



1 the question. It's ambiguous. You may  
2 respond to that question if you  
3 understand it.

4 THE WITNESS: Can you repeat the  
5 question, please?

6 Q. Carlos, after you received the eye  
7 surgery in April of 2015, were you able to  
8 stand for long periods of time?

9 MR. LEON: Objection to the form of  
10 the question. It's ambiguous. You may  
11 respond to that question if you  
12 understand it.

13 THE WITNESS: Yes.

14 Q. Carlos, did the surgery that you  
15 received in May 2015 negatively impact your  
16 ability to engage in physical activities?

17 MR. LEON: Objection to the form of  
18 that question, compound and ambiguous.  
19 You may respond to the extent that you  
20 understand that question.

21 THE WITNESS: Can you repeat the  
22 question?

23 Q. Did the surgery that you received in  
24 May 2015 negatively impact your ability to  
25 engage in physical activity?

1 MR. LEON: Objection to the form of  
2 that question. It's more ambiguous than  
3 the previously withdrawn question. You  
4 may respond to that question,  
5 Mr. Chinchu.

6 THE WITNESS: No.

7 Q. Do you currently engage in any  
8 physical activities?

9 MR. LEON: Objection to the form of  
10 that question. Super confusing. You may  
11 respond.

12 THE WITNESS: I go walking.

13 Q. Do you engage in any other physical  
14 activities?

15 MR. LEON: Objection to the form of  
16 that question. Confusing, ambiguous.  
17 You may respond.

18 THE WITNESS: No.

19 Q. Are you able to engage in any other  
20 physical activities besides walking?

21 MR. LEON: Objection to the form of  
22 that question. Confusing, ambiguous and  
23 also highly irrelevant. You may respond  
24 to this question and this line of  
25 questions one last time.

1 And just to clarify, like I said,  
2 the last part, that he's going to answer  
3 this line of questions one last time.

4 THE WITNESS: No.

5 Q. Earlier today, Carlos, you testified  
6 that you get tired frequently; is that correct?

7 MR. LEON: Objection to the form of  
8 that question and to the extent that it  
9 mistakenly recounts prior testimony. You  
10 may respond.

11 THE WITNESS: Now, recently, not  
12 before.

13 Q. Do you need to rest during the day  
14 because of your health problems?

15 MR. LEON: Objection to the form of  
16 the question to the extent that it  
17 assumes evidence and testimony not  
18 previously acknowledged or admitted in  
19 this action. You may respond.

20 THE WITNESS: Can you repeat the  
21 question?

22 Q. Do you need to rest during the day  
23 because of your health problems?

24 MR. LEON: Objection to the form of  
25 the question and to the extent that it

1           misconstrues prior testimony or assumes  
2           prior evidence and testimony that has not  
3           been admitted into this action or this  
4           deposition. Subject to those objections,  
5           you may respond.

6           THE WITNESS: No.

7           Q. Did you have to rest during the day  
8           because of the health problems that you've  
9           previously described in 2015?

10           MR. LEON: Objection to the form of  
11           the question. Confusing, lacks scope --  
12           limited scope or clear scope. You may  
13           respond.

14           THE WITNESS: Yes.

15           Q. And how long did you rest during the  
16           day in 2015?

17           MR. LEON: Objection to the form, to  
18           the extent that it assumes facts in  
19           evidence not previously admitted, to the  
20           extent that it is confusing and  
21           misleading. You may respond if you  
22           understand the question.

23           THE WITNESS: Could you repeat the  
24           question?

25           Q. How long did you rest during the day

1 in 2015?

2 MR. LEON: Objection to the form of  
3 that question --

4 MR. MIZRAHI: You've already  
5 objected. You don't need to -- you've  
6 already objected. You've asked me to  
7 repeat it. You've already objected to  
8 the question.

9 MR. LEON: Jason. Jason. Calm  
10 down. I know being ill-informed gets you  
11 flustered, but please, don't yell at me.  
12 Don't yell at me.

13 And you said the question again, so  
14 I'm objecting to your new question, which  
15 is still bad. So, I'm directing my  
16 client --

17 MR. MIZRAHI: It's the same  
18 question. It's the same question.

19 MR. LEON: Jason, let's continue --  
20 no. It's actually not.

21 So, I'm going to continue objecting  
22 to an improper line of questions, as  
23 you've done throughout this deposition,  
24 and while you're going back and forth  
25 with me, my client is going to wait until

1 we're done, a clear question's asked --

2 I'm sorry. Did you just mute me?

3 Did you just mute me? Jason, did you  
4 just mute me?

5 Madam Court Reporter, can you hear  
6 me?

7 THE REPORTER: Yes, I can.

8 MR. LEON: Okay. Because, I just  
9 saw "Muted by the host," so I'm not sure,  
10 Jason, if you have access and you're  
11 muting me. Because, if that's what  
12 you're doing, then we're not going to  
13 continue this until you stop doing that.

14 So, Jason, were you muting me?  
15 Jason, were you muting me?

16 MR. MIZRAHI: No. I wasn't muting  
17 you.

18 MR. LEON: Okay. Madam Court  
19 Reporter and Mr. Translator and my  
20 client, if at any point in time I'm  
21 talking and it seems like I went mute,  
22 please let me know so we can leave a  
23 clear record.

24 So, what I was saying before is,  
25 Mr. Mizrahi, you asked a question, I

1 thought it was not properly phrased, I  
2 objected, directing my client to respond.

3 You then proceeded to repeat the  
4 question not quite the same, I objected,  
5 repeated my objection, and then you  
6 turned bright red and started yelling at  
7 the top of your lungs when I was  
8 objecting.

9 Don't do that. It's bad, it's not  
10 appropriate in this sort of action.

11 Please repeat the question for my  
12 client for him to respond and so that I  
13 can make my objection clear for the  
14 record.

15 Q. Carlos, how long did you rest during  
16 the day in 2015?

17 MR. LEON: Objection to the form of  
18 that question. It's confusing, it's  
19 unclear and it appears to assume evidence  
20 and testimony that has not been  
21 previously admitted in this deposition.

22 Subject to those objections,  
23 Mr. Chinchá, you may respond.

24 THE WITNESS: (Speaking in Spanish.)

25 MR. LEON: Can you translate that,

1 please?

2 THE WITNESS: The gentleman is  
3 confusing.

4 MR. LEON: "The gentleman is  
5 confusing me" is what my client just said  
6 in Spanish.

7 He's referring to you, Mr. Mizrahi.  
8 So, I'd like to state that for the record  
9 that my client is claiming that you are  
10 confusing him. So, please stop confusing  
11 my client and ask questions.

12 MR. MIZRAHI: Madam Court Reporter,  
13 could you please repeat back the line of  
14 questioning beginning from, "Did you need  
15 to rest during the day because of the  
16 health problems that you previously  
17 described in 2015?"

18 (Record read.)

19 MR. MIZRAHI: That's fine.

20 MR. LEON: Sorry. I'm going to take  
21 a quick break right now, because I need  
22 to use the bathroom.

23 MR. MIZRAHI: Mr. Interpreter, if  
24 you could just please --

25 MR. LEON: Jason, Jason, I'm going



1 to go take a break.

2 MR. MIZRAHI: There's a question  
3 pending.

4 MR. LEON: No, there actually isn't  
5 a question pending.

6 MR. MIZRAHI: There is.

7 MR. LEON: No, no. There actually  
8 isn't. You've asked a question, he's  
9 answered. There's not a new question  
10 pending here.

11 So, we're going to take a break  
12 right now, okay, because you asked the  
13 question a billion times and he responded  
14 to it.

15 MR. MIZRAHI: There's a question  
16 pending.

17 MR. LEON: Okay. How about this.  
18 Right after he answers your question we  
19 are taking a break.

20 If you do what I think you're going  
21 to do, which is start asking another one  
22 as soon as we're going to take the break,  
23 I'm going to cut you off and tell you  
24 we're done and we're taking the break,  
25 because I've asked for a break.

1           So, you're going to finish your  
2           question, ask it again and he'll answer  
3           it again. And at that point we're taking  
4           a break.

5           Mr. Translator, could you please  
6           translate that directive to my client.

7           THE INTERPRETER: (Complies.)

8           MR. LEON: That's it. There's no  
9           question pending.

10          MR. MIZRAHI: There's a question  
11          pending. Could you please repeat the  
12          last question that was pending?

13          MR. LEON: And please, if there's a  
14          response from my client in any shape or  
15          form, please read that out loud, as well,  
16          because I recall there being an answer.

17          MR. MIZRAHI: Madam Court Reporter,  
18          if you could just repeat back the line of  
19          questioning with the answer and if the  
20          interpreter could please translate that  
21          back for the client.

22          THE INTERPRETER: Sure.

23          (Record read.)

24          MR. MIZRAHI: If you could please  
25          repeat back the line of questioning

1 asking if he rested during the day in  
2 2015.

3 MR. LEON: I'm objecting in advance,  
4 because that's a confusing thing for  
5 everyone. So, I'm objecting to the fact  
6 that it's summarizing a whole bunch of  
7 stuff. So, I'm going to start with that  
8 objection and wait for the question to  
9 come in.

10 (Record read.)

11 MR. LEON: Are we reading the answer  
12 back? Are we reading the answer back,  
13 just to be clear?

14 THE REPORTER: Are you wanting all  
15 the questions and answers read from then  
16 until now?

17 MR. MIZRAHI: Let's take a bathroom  
18 break.

19 MR. LEON: Im sorry?

20 MR. MIZRAHI: Do you need to take a  
21 bathroom break?

22 MR. LEON: No. I'd rather finish  
23 this right now, then I'll go use the  
24 bathroom, so there won't be a question  
25 pending and I won't be causing any

1 issues. I want to work with you. Get  
2 that question out.

3 I'm sorry. Could you repeat the  
4 question, the last question, so that my  
5 client could respond and we can take that  
6 break?

7 THE REPORTER: The very last one or  
8 the line of questioning?

9 MR. LEON: The very last question.

10 MR. MIZRAHI: Madam Court Reporter,  
11 you don't have to listen to him --

12 MR. LEON: So, you're withdrawing  
13 the question? Are you withdrawing the  
14 question? Because, otherwise there is a  
15 pending question and my client needs to  
16 respond to it and I'm asking the court  
17 reporter to read it back.

18 Just because you're paying for the  
19 transcript doesn't mean you order  
20 everyone around here.

21 So we'll leave it clear for the  
22 record, are you withdrawing the question?  
23 Yes or no.

24 MR. MIZRAHI: No. The questions's  
25 still posed.

1 MR. LEON: Okay. So then, let the  
2 court reporter repeat the question so he  
3 can answer it so that there's no pending  
4 question when I go to use the bathroom.  
5 God forbid that should happen. So, I  
6 want to clear it up before we go on our  
7 break.

8 Please don't roll your eyes, I'm  
9 being very sincere with you. You're  
10 taking your time sipping your tea.  
11 What's your response to my question?

12 MR. MIZRAHI: Are you finished?

13 MR. LEON: Are you going to ask the  
14 question? Are you going to have the  
15 question read back? Are you going to  
16 allow my client to respond to it or are  
17 you withdrawing the question?

18 Because, if you're not going to ask  
19 the court reporter to repeat it and  
20 you're going to tell her not to repeat  
21 the question, then I see that as  
22 withdrawing the question.

23 MR. MIZRAHI: Well, we can withdraw  
24 the question. I'll ask it again.

25 MR. LEON: Okay. We're taking a

1 break.

2 THE INTERPRETER: How long is the  
3 break?

4 MR. MIZRAHI: We'll take a  
5 two-minute.

6 MR. LEON: No, I'm sorry. I'm  
7 sorry. You're not going to dictate how  
8 long I'm going to use the bathroom for.

9 MR. MIZRAHI: We're going to take --

10 MR. LEON: No, no. Jason, you're  
11 not going to dictate how long I'm going  
12 to use the bathroom for. So, I'm taking  
13 a bathroom break. I hope you can respect  
14 biological necessities. Please. Please.

15 I'm going to take a five- to  
16 ten-minute break and I'm going to ask my  
17 client -- I'm going to ask my client --  
18 I'm going to ask my client -- I'm going  
19 to ask my client -- I'm going to ask my  
20 client -- stop interrupting. Stop  
21 interrupting. Stop interrupting. I'm  
22 going to ask my client to turn off the  
23 video --

24 THE INTERPRETER: I can't hear  
25 anymore.

1 MR. MIZRAHI: He needs to go to the  
2 bathroom. I'm not going to waste time  
3 with him explaining --

4 THE INTERPRETER: The Witness cannot  
5 hear us.

6 MR. LEON: Okay. I want this to be  
7 translated, as well.

8 Jason, you've done this now three  
9 times and I'm calling you out on it, that  
10 when I've been talking on the record you  
11 have abused the Zoom host -- now you're  
12 walking out. I'm going to put this  
13 statement on the record.

14 You have muted me when I've been  
15 talking in order to stop me from making  
16 statements on the record. You do that  
17 again and this deposition will not  
18 continue, Jason.

19 Do you understand me? I'm talking  
20 to you. Because, you don't get to do  
21 that. You don't get to shut my mic off  
22 when I'm making a statement on the record  
23 on behalf of my client.

24 How many more legally inappropriate  
25 things can you do in this deposition?

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1 You've already been told by the federal  
2 court judge to stop asking inappropriate  
3 questions. Now you're cutting off my  
4 mic?

5 MR. MIZRAHI: Yeah.

6 MR. LEON: No. You don't get to do  
7 that.

8 MR. MIZRAHI: You're wasting  
9 everyone's time, so I'm cutting off your  
10 mic.

11 MR. LEON: No, no.

12 MR. MIZRAHI: We're taking five  
13 minutes.

14 MR. LEON: No, no. So, you admit  
15 that you cut my mic off? You admit that  
16 you cut my mic off?

17 MR. MIZRAHI: We'll come back in  
18 five minutes.

19 MR. LEON: Have you admitted -- do  
20 you admit that you cut my mic off  
21 repeatedly now, at least two to three  
22 times? Do you admit it?

23 Okay. You do that again,  
24 deposition's over and you get to make an  
25 application to the Judge. And you walked



1 away -- I'm still talking on the record,  
2 the court reporter can get this.

3 You do not get to cut my mic. You  
4 do that again, I can't trust that the  
5 transcript is accurate and no fault of  
6 the court reporter, the translator or my  
7 client.

8 You do that again -- and just to  
9 clarify, Mr. Mizrahi has walked away.  
10 He's probably just a couple feet away  
11 from the camera, can hear me. If he does  
12 that again this deposition's over,  
13 because I'm not going to allow that to  
14 happen. It's inappropriate and if you do  
15 it again I will request monetary  
16 sanctions against you and your firm.

17 Hello, Mr. Mizrahi. You returned as  
18 soon as that was done being translated,  
19 so I'm going to assume you heard all  
20 that. Thank you. We're going to be  
21 taking that break now.

22 Mr. Chinchu, please have your  
23 daughter cut off the mic and the video  
24 while we take that break to stop Counsel  
25 from engaging in anything that might be

1 appropriate. I am now exiting.

2 MR. MIZRAHI: Before we go off the  
3 record I'd just like to make a point that  
4 Counsel cannot use --

5 MR. LEON: We're off the record?  
6 We're off the record?

7 THE REPORTER: No. We're not off  
8 yet.

9 MR. LEON: Oh, okay. So,  
10 Mr. Chinchu, please have your daughter  
11 cut your video and your mic so that  
12 Counsel can have a conversation on the  
13 record.

14 Okay. All right. We're back on the  
15 record. So, my client is not on this  
16 call right now or this part of the Zoom  
17 deposition.

18 What were you saying, Jason?

19 MR. MIZRAHI: I would like to make a  
20 quick statement before we break.

21 MR. LEON: I'm listening.

22 MR. MIZRAHI: I'd like to make a  
23 statement for the record that counsel is  
24 prohibited from engaging in any ex parte  
25 conversations or consultations with his

1 client during a break.

2 If he needs to take a break to use  
3 the bathroom, he's welcome to do so.  
4 He's prohibited from engaging in any  
5 counseling or consulting to his client or  
6 coaching of his client at any time  
7 while on break.

8 Thank you. We can take a break.

9 MR. LEON: I'm going to say this and  
10 if you walk away like you were doing  
11 before, I'll just finish.

12 I'm not saying that we were going to  
13 do that, because I'm going to use the  
14 bathroom, but I do not accept your  
15 characterizations of what you think is  
16 going on and I don't agree with your  
17 legal conclusion. So, stating that for  
18 the record.

19 I will now take the break, use the  
20 bathroom and return as quickly as  
21 possible for you, Jason. Thank you.

22 THE INTERPRETER: Is this going to  
23 be a five-minute or a ten-minute break?  
24 Just want to know.

25 MR. LEON: I'd say -- let's do ten

1 minutes. Thank you.

2 MR. MIZRAHI: We're going to go  
3 back -- a quick bathroom break, five  
4 minutes.

5 MR. LEON: No, no, no. I'm sorry.  
6 No, no. No, no. I'm telling you, Jason,  
7 right now, I'm not returning in five  
8 minutes. I just told you, ten minutes.

9 You can say whatever you want. You  
10 can be back in five minutes, I will be  
11 back in ten minutes. Thank you.

12 It is now 2:23. As of the moment  
13 that I finish this sentence I'm cutting  
14 my mic and my video to avoid this  
15 completely nonsensical back and forth.  
16 Thank you.

17 (Recess taken.)

18 (Off-the-record discussion held.)

19 MR. LEON: Mr. Mizrahi, as I just  
20 told you right before going back on the  
21 record, given the inappropriate things  
22 that you did, I've been advised --

23 Well, first of all, from my personal  
24 experience, you un-mic'd me at least two  
25 to three times when I was making

1 statements on the record.

2 Whether or not you thought I was  
3 going on too long about it, that's so  
4 inappropriate to un-mic me.

5 And two, I just confirmed with my  
6 client and I asked his daughter that you  
7 did repeatedly attempt to and un-mic'd  
8 his feed when I took the break. And that  
9 is really something that you've been  
10 doing all along to me, so it's not  
11 surprising that you would do something  
12 about it with them.

13 I want a court ruling saying that,  
14 regardless of who's taking over, that  
15 you're not going to take over host  
16 privileges and you're not going to do  
17 this again.

18 So, I can't go on in good faith,  
19 because I don't know how much has been  
20 cut off because of what you've done.

21 And I don't want to debate about it,  
22 we don't need to recount every last  
23 question. There's not enough time for  
24 that. I'm going to call Judge Tiscione's  
25 chambers.

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1 And all this time that we're wasting  
2 is on you. Our position is that you're  
3 waiving your time because of the  
4 inappropriate sanctionable --  
5 sanctionable actions that you've --

6 MR. MIZRAHI: (Inaudible), but hurry  
7 up.

8 MR. LEON: I'm sorry. What was  
9 that?

10 MR. MIZRAHI: You're wasting  
11 everybody's time.

12 MR. LEON: Oh. Okay. And obviously  
13 I disagree, Jason.

14 MR. MIZRAHI: Yeah.

15 MR. LEON: Yeah. So, I'm going to  
16 call right now. I'm just pulling up  
17 Judge Tiscione's number and I'm going to  
18 dial right away. One moment.  
19 Okey-dokey.

20 And please, Madam Court Reporter, if  
21 you can keep all of this on the record.

22 (The following call to Magistrate  
23 Judge Steven Tiscione's chambers took  
24 place:)

25 UNIDENTIFIED SPEAKER: Good

1 afternoon, Magistrate Judge Tiscione's  
2 chambers.

3 MR. LEON: Hi. My name is Louis  
4 Leon from the Law Offices of William  
5 Cafaro. I represent the Plaintiff in a  
6 matter captioned Chinchu v. Patel.

7 Actually, the parties called earlier  
8 today. There was a discovery dispute at  
9 a deposition that Defendant is partaking  
10 in of my client. And I am Plaintiff's  
11 counsel. I'm the one defending the  
12 deposition.

13 I'm calling regarding an extremely  
14 urgent sensitive matter that we need to  
15 address with the Judge. It's an issue so  
16 important that I think it could  
17 potentially result in the deposition  
18 being cancelled.

19 UNIDENTIFIED SPEAKER: What is the  
20 number to reach you, please?

21 MR. LEON: Sure. I can give you my  
22 cellphone number. XXX-XXX-XXXX.

23 UNIDENTIFIED SPEAKER: Do you have a  
24 court reporter present?

25 MR. LEON: Yes, I do.

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1 UNIDENTIFIED SPEAKER: Speakerphone  
2 capabilities?

3 MR. LEON: Yes.

4 UNIDENTIFIED SPEAKER: Thank you.

5 (The call was concluded.)

6 MR. LEON: Madam Court Reporter, I  
7 would just ask that any -- I'm sure  
8 Defense counsel won't object to this --  
9 any cellphone numbers given from either  
10 Defense counsel or myself be redacted for  
11 the record, just for confidentiality.

12 I'm going to wait until Judge  
13 Tiscione calls us back --

14 MR. MIZRAHI: We're going to move  
15 forward with the deposition.

16 MR. LEON: Well, Jason, I'm glad  
17 that that's what you want. But, when you  
18 do something as inappropriate as what  
19 you've been doing with no basis  
20 whatsoever --

21 MR. MIZRAHI: Louis --

22 MR. LEON: No, no. Jason, Jason,  
23 I'm not debating with you, I'm telling  
24 you how this is going to happen. You can  
25 do it, but you're not going to be able to



1 proceed without me or my client.

2       You did something inappropriate that  
3 the Judge needs to rule on. If the Judge  
4 determines that it's fine to un-mic  
5 people when you don't want to hear them  
6 on the record or try to listen in to my  
7 client's private conversations, if he's  
8 even having one, if the Judge thinks  
9 that's appropriate, then we'll proceed  
10 right away.

11       MR. MIZRAHI: Louis, we're going to  
12 move forward with the deposition --

13       MR. LEON: Great, Jason. Then you  
14 can continue. We're going to wait and  
15 I'm going to give him -- let's give it  
16 15 --

17       MR. MIZRAHI: No.

18       MR. LEON: Okay. Jason, I'm not  
19 asking you for your opinion, I'm not  
20 asking for your perspective. I'm telling  
21 you that this is such an egregious  
22 violation of your duties as an attorney  
23 in federal court that I'm not going to  
24 continue while you continue running afoul  
25 of every decency law or statute that

1     there is.

2             Please. We're going to wait for the  
3     Judge to call, because I'm not going to  
4     have this argument over and over.

5             As of right now I don't know how you  
6     may have tainted the record. And you  
7     knew exactly what you were doing. You  
8     knew exactly what you were doing. And  
9     this is all, again, on the record.

10            So, we're going to wait, I'm going  
11     to come back on the record around --

12            MR. MIZRAHI: You're wasting  
13     everybody's time.

14            MR. LEON: No, no, Jason. You  
15     wasted everyone's time the moment you  
16     starting doing unethical things like  
17     trying to listen in to my client's room  
18     and see if he was talking. Because,  
19     that's what it was about, right?

20            Because, when we went -- right  
21     before going off the record -- actually,  
22     that might be a call right there.

23            (The following call with Magistrate  
24     Judge Steven Tiscione took place:)

25            MR. LEON: Hello.

1 THE COURT: Good afternoon.

2 MR. LEON: Hello, Justice Tiscione.

3 This is Louis Leon, Plaintiff's counsel.

4 I have you on speaker near the laptop.

5 The court reporter, Defense counsel  
6 and the translator are currently on the  
7 other video call line, my client is not  
8 on the line right now.

9 I wanted to bring up something that  
10 I can only characterize as -- and I'm  
11 really not being dramatic -- one of the  
12 most egregious things I've ever seen an  
13 attorney do in a deposition that warrants  
14 a judicial ruling, because there's no  
15 other way around it.

16 At some point at the beginning of  
17 this case Mr. Jason Mizrahi took over  
18 hosting privileges of the Zoom  
19 application. I thought nothing of it.

20 But, throughout at least the last  
21 hour, when I was making objections or  
22 statements on the record, I saw him --  
23 because it says to me that he did it --  
24 he would un-mic me while I was making  
25 objections so that no one else could hear

1 what I was saying.

2 He did that repeatedly and I called  
3 him out on it and I even put it on the  
4 record that he's done it at least three  
5 times.

6 Adding insult to injury -- and this  
7 is, perhaps, the most egregious thing  
8 that he just did -- while maintaining  
9 those hosting privileges there was a  
10 question he asked my client and I said,  
11 "I'm going to take a bathroom break."

12 He didn't like the fact that we were  
13 taking a break, he wanted to continue,  
14 and he told my client, "Under no  
15 circumstances can you talk to your  
16 attorney."

17 Fine. I stated, "Look, we're not  
18 going to talk, I have to use the  
19 bathroom, but just, I don't agree with  
20 your characterization," but we go off the  
21 record.

22 As I'm about to go to the bathroom I  
23 get a call from my client and his  
24 daughter, who's helping him, saying  
25 that -- and I can have his daughter come

1 in and respond and tell Your Honor this,  
2 because I just clarified this with her --  
3 Mr. Mizrahi purposely and repeatedly  
4 un-mic'd --

5 So, I always ask my client to un-mic  
6 his feed and to close the video so that  
7 nothing can be heard or seen from his  
8 room.

9 Mr. Mizrahi clearly, thinking that  
10 my client was going to have a private,  
11 confidential, privileged conversation  
12 with me, on three or four occasions  
13 attempted to un-mic his feed. My  
14 client's daughter will verify that.

15 And this is one of the most  
16 egregious things ever, trying to, like,  
17 hack someone's phone and listen to an  
18 attorney and client talk.

19 I can't continue if this is what  
20 he's going to do and we need a ruling  
21 saying that this is inappropriate and  
22 that, you know, any absences of the  
23 record created by this, it's going to be  
24 held against Defendants.

25 And Mr. Mizrahi can't justify why

1 he's done any of this. When I asked him  
2 "Why did you un-mic me" when I was on the  
3 record, he said, "Oh, you're talking too  
4 much, we're done, you're talking too  
5 much, I'm cutting you off."

6 Are you serious? Like -- that's the  
7 inappropriate thing he's done.

8 It's egregious and we think it's  
9 sanctionable, Your Honor. I've never had  
10 an attorney do this to me. I'm a pretty  
11 young attorney, but I've never seen any  
12 attorney ever do anything like that.

13 So, I will let Mr. Mizrahi defend  
14 his actions that are clearly on the  
15 record.

16 THE COURT: Okay.

17 MR. MIZRAHI: Yeah, Judge, I'm sorry  
18 that we're going to have to burden you  
19 again for the second time today for an  
20 issue that is obviously -- could be  
21 avoided.

22 The fact of the matter is that, ever  
23 since this deposition has been commenced,  
24 Plaintiff's attorney has been  
25 unnecessarily prolonging this deposition.

1 He's been objecting to every single  
2 line of questioning incessantly. He's  
3 been instructing his client and guiding  
4 his client.

5 The objections that have been raised  
6 are multiple objections as to form, which  
7 he then says are confusing before his  
8 client ever raises any issues with  
9 wording or with the form of the question  
10 or whether or not he understands them,  
11 which leads his client to then say that  
12 they're confusing. This has been going  
13 on the entirety of the deposition.

14 More recently we've now been taking  
15 a 20-minute break for what Plaintiff's  
16 counsel has described as a bathroom  
17 break. I have no idea what he's talking  
18 about with muting or un-muting anybody's  
19 microphone.

20 MR. LEON: That's on the record.  
21 Let's have the reporter read it back.  
22 And that's a lie and you can be held  
23 accountable for lying about this.

24 You admitted it on the record,  
25 Mr. Mizrahi. Should we ask the court

1 reporter to read it back?

2 MR. MIZRAHI: Mr. Leon had requested  
3 that I give host privileges to one of the  
4 court reporters. One of the court  
5 reporters has host privileges.

6 We are now wasting another half an  
7 hour since we've gone on break to deal  
8 with this issue and it's a half an hour  
9 that we're going to have to tack back on  
10 to the --

11 MR. LEON: No.

12 MR. MIZRAHI: -- deposition time.

13 He's clearly been prolonging this  
14 deposition from the beginning with his  
15 unnecessary objections and he's  
16 prolonging it now with a phone call that  
17 has been avoided or could have been  
18 avoided.

19 He's asked me to transfer the host  
20 privileges to somebody else, I  
21 transferred the host privileges to  
22 somebody else so there weren't any other  
23 issues. There's really no reason to be  
24 having this phone call --

25 MR. LEON: Your Honor, I could have



1 my client's daughter answer your  
2 questions under oath about what just  
3 happened, and Mr. Mizrahi clearly stated  
4 on the record that he had muted me  
5 because I'm ranting, because I'm talking  
6 too much.

7 There's no excuse -- I mean,  
8 Mr. Mizrahi has a habit of lying to  
9 Your Honor and this is prime center the  
10 type of example that Your Honor needs to  
11 consider.

12 We can go back to the record where  
13 he admits it. And now he's saying, "I  
14 don't know what that's about"?

15 How much more can he get away with  
16 in this case lying to a federal judge,  
17 lying on the record? There has to be  
18 consequences and he can't be allowed to  
19 continue doing this.

20 Because, he did this to me three  
21 times on the record and he did it to my  
22 client off the record in an effort to  
23 listen in on conversations that he  
24 thought that my client might be having  
25 with me.

1 THE COURT: Okay. What exactly is  
2 going on with this Zoom thing? You've  
3 got -- I guess, Mr. Mizrahi, you're the  
4 one in charge of deciding, like, who's  
5 being, you know, allowed to talk on it or  
6 not? What is --

7 MR. MIZRAHI: No, Your Honor. The  
8 court reporter is.

9 MR. LEON: That's now. That's now.  
10 Not before. Now. But, before it wasn't  
11 the case.

12 And I'll gladly file a letter  
13 providing the evidence from the  
14 transcript that Mr. Mizrahi insists that  
15 I'm lying or I'm misreading or  
16 misunderstanding what happened.

17 THE COURT: Okay. Well, you're  
18 going to have to explain that, because, I  
19 agree, I'm not entirely --

20 MR. LEON: Oh, I'll explain it,  
21 Your Honor.

22 In the Zoom application the host,  
23 the person who essentially has privileges  
24 over everyone and everything, can dictate  
25 what each person's setting is.

1           On the bottom left screen of the  
2           Zoom application there's a mic where you  
3           can click "Mute" and you can click "Stop  
4           Video." It does not allow you out of the  
5           Zoom application.

6           But, when there's a break, everyone,  
7           including Mr. Mizrahi, the translator,  
8           both translators, the court reporter and  
9           anyone else, to avoid being heard in  
10          their privacy when no one is supposed to  
11          be listening, they all knock out their  
12          video, they hit a setting that says "Stop  
13          Video" and they hit "Mute" to stop anyone  
14          from hearing.

15          Because Mr. Mizrahi had hosting  
16          privileges up until literally five or ten  
17          minutes ago, when I said I was going to  
18          call the Judge, I wasn't taking a  
19          bathroom break, I said I was going to  
20          have to consider this -- I said I was  
21          going to use the bathroom, but also  
22          consider the implications of this, during  
23          that break I got an urgent call from my  
24          client telling me that Mr. Mizrahi had  
25          been un-muting his side. And his

1 daughter can confirm that.

2 And it says -- how did my client  
3 know that it was him? It says, "The  
4 host, Jason Mizrahi, is trying to un-mute  
5 your feed." And he repeatedly did it.

6 And my client's daughter had to  
7 repeatedly mute it to avoid him from  
8 listening to my client.

9 And it seems to me that the only  
10 reason this was being done is because  
11 Mr. Mizrahi was under some false  
12 impression that I was having some  
13 conversation with my client which would  
14 be privileged and confidential.

15 And if Mr. Mizrahi insists on lying,  
16 I will insist on submitting an  
17 application to the Court proving that he  
18 admitted that he had cut my mic several  
19 times and has played with the mic at  
20 least on the record.

21 And subsequently he denied it, that  
22 it happened off the record, but I will  
23 gladly have my client's daughter testify  
24 or answer your questions on the record,  
25 Your Honor.

1 THE COURT: Look, you know what?  
2 For right now let's finish this  
3 deposition. Give the court reporter the  
4 hosting privileges so that nobody else  
5 messes with the mic.

6 Once you have the transcript, if you  
7 want to make some kind of a motion based  
8 on his cutting off your objections or  
9 whatever...

10 You know, without seeing it in front  
11 of me it's really hard for me to make any  
12 kind of a ruling on that at this point.

13 But, for the rest of this  
14 deposition, only the court reporter  
15 should have hosting privileges in terms  
16 of mic'ing or un-mic'ing people. Okay?

17 MR. LEON: Yes, Your Honor. Could I  
18 actually ask just one quick clarification  
19 to avoid having Mr. Mizrahi and I making  
20 another call?

21 This deposition started at 10:30.  
22 Mr. Mizrahi is, for all intents and  
23 purposes, I would say, is to blame for  
24 all these delays.

25 I don't agree that we should be

1 going until after, like, 6:00 o'clock  
2 with a deposition if all these phone  
3 calls have had to do with Mr. Mizrahi not  
4 doing what he was supposed to do.

5 Can we just state that we're not  
6 going to go until 7:00 or 8:00 o'clock at  
7 night or until such time that Mr. Mizrahi  
8 thinks it's satisfactory?

9 It's seven hours and 5:30 is  
10 actually seven hours. We're willing to  
11 go until 6:00 to accommodate for a lunch  
12 break of 30 minutes, but I think that's  
13 all we should have to go.

14 Because -- this is unnecessary. I  
15 agree. But, it's because Defense counsel  
16 did something wrong and unnecessary.

17 MR. MIZRAHI: Your Honor, we've been  
18 on the phone now and we've been on a  
19 break now for a half an hour and for the  
20 entirety of the deposition Mr. Leon has  
21 been instructing and improperly guiding  
22 his client. We're wasting so much time.

23 MR. LEON: He hasn't given one  
24 example of how I did that. Not one. And  
25 that's the most significant thing.

1 MR. MIZRAHI: He's now taken an hour  
2 and a half of everybody's time.

3 MR. LEON: You made the first phone  
4 call and it got denied, I made the second  
5 phone call and now we're here because of  
6 what you were doing. It's not my fault,  
7 it's not my client's fault. He has been  
8 on this since 10:30 and now it's 2:53,  
9 Your Honor.

10 I would just ask that we end this at  
11 5:30 or, at the latest, 6:00.

12 THE COURT: All right. Look, just  
13 go to 6:00 and finish this up. No more  
14 delays.

15 MR. MIZRAHI: Your Honor,  
16 Plaintiff's counsel's going to continue  
17 to delay this deposition. He's going to  
18 continue to delay it.

19 MR. LEON: Your Honor, we have  
20 not --

21 THE COURT: Excuse me. I don't know  
22 what you expect me to do. I'm not in the  
23 room. I don't know what he's saying or  
24 how things are being delayed.

25 How, exactly, are you expecting me